

*Article 24.05*  
*Special Education*  
  
*Administrative Rules*  
*of*  
*South Dakota*  
*Revision*  
  
*January 2007*

**Draft**

ARTICLE 24:05

SPECIAL EDUCATION

Chapter

24:05:01	Definitions, Repealed.
24:05:02	Screening and evaluation, Repealed.
24:05:03	Placement and program requirements, Repealed.
24:05:04	District program, Repealed.
24:05:05	Auxiliary services, Repealed.
24:05:06	Fees and payments, Repealed.
24:05:07	General provisions, Repealed.
24:05:08	Child identification, Repealed.
24:05:09	Program alternatives, Repealed.
24:05:10	Funding, Repealed.
24:05:11	Cooperative units, Transferred.
24:05:12	Auxiliary placements and tuition services, Repealed.
24:05:13	Definitions.
24:05:14	Administration.
24:05:15	<del>Appeals.</del> <u>State complaints.</u>
24:05:16	Personnel development and <del>standards</del> <u>qualifications.</u>
24:05:17	Child count.
24:05:18	<del>Recovery of funds for misclassified children</del> <u>Repealed.</u>
24:05:19	Allocation and use of funds.
24:05:20	Eligibility for federal funds.
24:05:21	Comprehensive plans.
24:05:22	Child identification.
24:05:23	Requirements for child evaluators.
24:05:24	<del>Referral procedures</del> <u>Repealed.</u>
24:05:24.01	Eligibility criteria.
24:05:25	Evaluation, <u>consent</u> , and placement procedures.
24:05:26	Suspension.
24:05:26.01	Expulsion.
24:05:27	Individual educational program.
24:05:28	Least restrictive environment.
24:05:29	Confidentiality of information.
24:05:30	Procedural safeguards.
24:05:31	Private school placement.
24:05:32	Voluntary enrollment in nonpublic schools.
24:05:33	Funding.
24:05:33.01	Extraordinary costs.
24:05:34	Auxiliary placements and tuition services.
24:05:35	Program alternatives.

Draft

**CHAPTER 24:05:01**

**DEFINITIONS**

(Repealed. 16 SDR 41, effective September 7, 1989)

**CHAPTER 24:05:02**

**SCREENING AND EVALUATION**

(Repealed. 3 SDR 69, effective July 1, 1977)

**CHAPTER 24:05:03**

**PLACEMENT AND PROGRAM REQUIREMENTS**

(Repealed. 3 SDR 69, effective July 1, 1977)

**CHAPTER 24:05:04**

**DISTRICT PROGRAM**

(Repealed. 3 SDR 69, effective July 1, 1977)

**CHAPTER 24:05:05**

**AUXILIARY SERVICES**

(Repealed. 3 SDR 69, effective July 1, 1977)

**CHAPTER 24:05:06**

**FEES AND PAYMENTS**

(Repealed. 3 SDR 69, effective July 1, 1977)

**CHAPTER 24:05:07**

**GENERAL PROVISIONS**

(Repealed. 16 SDR 41, effective September 7, 1989)

**CHAPTER 24:05:08**

**CHILD IDENTIFICATION**

(Repealed. 16 SDR 41, effective September 7, 1989)

**Draft**

**CHAPTER 24:05:09**

**PROGRAM ALTERNATIVES**

(Repealed. 16 SDR 41, effective September 7, 1989)

**CHAPTER 24:05:10**

**FUNDING**

(Repealed. 16 SDR 41, effective September 7, 1989)

**CHAPTER 24:05:11**

**COOPERATIVE UNITS**

(Transferred to Chapter 24:09:02, 27 SDR 6, effective August 6, 1980)

**CHAPTER 24:05:12**

**AUXILIARY PLACEMENTS AND TUITION SERVICES**

(Repealed. 16 SDR 41, effective September 7, 1989)

**CHAPTER 24:05:13**

**DEFINITIONS**

Section

24:05:13:01	Definitions.
24:05:13:02	Free appropriate public education (FAPE) defined.
24:05:13:03	<del>Foster parent.</del> <u>Repealed.</u>
<u>24:05:13:03</u>	<u>Parent.</u>

**24:05:13:01. Definitions.** Terms defined in § 24:03:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

(1) "Adjustment training center," "ATC," a facility as defined in § 46:11:01:01(2);

(2) "Adult services," services pertaining to independent living, vocational development, preemployment services, or employment services designed for persons 16 years of age or older;

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(3) "Approved program," a written description of a school district's, state agency's, special education school's, or adjustment training center's policies and procedures for implementing its special education program that is found by the department to comply with this article;

(4) "At no cost," the provision of specially designed instruction without charge to the parent except for incidental fees that are normally charged to students without disabilities or their parents as a part of the regular education program;

(5) "Brailist," a person who produces materials in Braille by the use of a manual Braille writer, slate and stylus, or computer;

(6) "Braille teacher," an individual who assists classroom teachers in the instruction of reading and writing through the use of Braille;

(7) "Business day," Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day;

(8) "Consent," as used in this article means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom;

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime; and

(d) If a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked.

(9) "Core academic subjects," means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(10) "Day," calendar day unless otherwise indicated as a business day or school day;

(11) "Day school program," a specialized program provided in a facility, a school district, or a cooperative center that a child attends during the day, returning home at night;

(12) "Department," the Department of Education ~~and Cultural Affairs~~;

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(13) "Early childhood special education program," a program specially designed to meet the unique needs of children with disabilities, birth through six years of age, including center-based instruction, home-based instruction, and instruction in hospitals and institutions;

(14) "Eligible student," a person through the age of 21 years who is a resident of the state of South Dakota and who requires special education or special education and related services because of the person's educational needs;

(15) "Homeless children," has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

(16) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ 1411 to 1420, inclusive, ~~June 4, 1997, December 3, 2004~~ and 34 C.F.R. Part 300, ~~Part 301, and Part 303~~, published in the Federal Register on ~~March 12, 1999~~ August 14, 2006;

(17) "Individual educational program," "IEP," a written statement educational program for a specific child with a disability individual, in accordance with chapter 24:05:27:01.03, based on the multidisciplinary evaluation and developed by an IEP team;

(18) "Individualized education program team," "IEP team," as used in this article, the term individualized education program team or IEP team means the group of individuals described in § 24:05:27:01.01 that is responsible for developing, reviewing or revising an IEP for a child with a disability;

(19) "Least restrictive environment," a learning environment for a child in need of special education or special education and related services, including a child placed in a public or private institution or another care facility, that includes to the maximum extent appropriate children who are not in need of special education or special education and related services, as determined through the child's individual educational program;

(20) "Limited English proficient," has the meaning given the term in section 9101(25) of the ESEA.

(21) "Local education agency," a school district or other public authority under supervision of the department established by state law for the purpose of providing free public education on a regional basis which also provides special education and related services to children with disabilities within the state of South Dakota;

~~(22) "Multidisciplinary evaluation," an individual evaluation of student needs in all areas related to the student's suspected disability, including, as applicable, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;~~

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~~(19) "Parent," a natural or adoptive parent, a guardian, a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives, a person who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with this article, but not the state if the child is a ward of the state;~~

(23) "Policy," a rule, regulation, or standard enacted by a school district board;

(24) "Physical education," the development of physical and motor fitness and fundamental motor skills and patterns through individual and group games and sports, including intramural and lifetime sports, special physical education, adapted physical education, movement education, and motor development;

(25) "Related services," services that support the provision of special education, including transportation and those developmental, corrective, and other supportive services determined by an IEP team to be required for an eligible child to benefit from special education;

(26) "Residential school program," an approved specialized program provided in a facility that a child attends 24 hours a day;

(27) "Scientifically based research," has the meaning given the term in section 9101(37) of the ESEA.

(28) "Secretary," the secretary of the Department of Education ~~and Cultural Affairs;~~

(29) "Self-contained program," a specialized instructional environment for eligible children in need of special education or special education and related services who require intensive instructional procedures;

(30) "Special education," instruction specially designed to meet the unique needs of a student with disabilities at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings;

(31) "Specially designed instruction," adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction;

(32) "Standard deviation," a statistical measure of variation derived by squaring each deviation in a set of scores, taking the average of these scores, and then taking the square root of the results;

~~(33) "Subgrantee," a recipient of federal funds from the department, such as a local school district, a cooperative educational service unit, and an adjustment training center;~~

**Draft**

(34) "Travel training," instruction provided, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment; ~~and~~

(35) "Vocational education," organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advance degree;

(36) "Universal design," has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002; and

(37) "Ward of the state," a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in 24:05:13:03.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:13:02. Free appropriate public education (FAPE) defined.** For purposes of this article, the term, free appropriate public education, or FAPE, includes special education and related services which meet the following requirements:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) Meet the standards of the state board in this article and the implementing regulations for Part B of the Individuals with Disabilities Education Act as in effect December 3, 2004 ~~June 4, 1997~~, and 34 C.F.R. Parts 300-302, published in the Federal Register on August 14, 2006 ~~March 12, 1999~~;

(3) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

(4) Are provided in conformity with an individual educational program and this article.

FAPE shall be made available to any eligible individual child with a disability who needs special education and related services even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. FAPE shall also be

**Draft**



provided to eligible children with disabilities who have been suspended or expelled from school consistent with chapters 24:05:26 and 24:05:26.01. The determination that a child is eligible under this article must be made on an individual basis by an IEP team.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; transferred from subdivision 24:05:13:01(10), 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**~~24:05:13:03. Foster parent.~~** A foster parent may act as a parent under Part B of the Individuals with Disabilities Education Act if:

- ~~—— (1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law;~~
- ~~—— (2) The foster parent has an ongoing, long term parental relationship with the child;~~
- ~~—— (3) The foster parent is willing to make educational decisions required of parents under the Individuals with Disabilities Education Act; and~~
- ~~—— (4) The foster parent has no interest that would conflict with the interests of the child.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:13:03. Parent.** Parent means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with 24:05:30:15.

Except as provided below, the biological or adoptive parent, when attempting to act as the parent under this article and when more than one party is qualified under this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

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If a judicial decree or order identifies a specific person or persons under subdivisions 1 through 4 of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

**Source:**

**General Authority:**

**Law Implemented:**

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## **CHAPTER 24:05:14**

### **ADMINISTRATION**

#### Section

24:05:14:01	Interagency agreements.
24:05:14:01.01	Coordination of services.
24:05:14:01.02	Obligation of noneducational public agencies.
24:05:14:01.03	Children with disabilities covered by public <u>benefits or insurance</u> .
24:05:14:01.04	Children with disabilities covered by private insurance.
24:05:14:01.05	Use of Part B funds for insurance costs.
24:05:14:02 to 24:05:14:12	Repealed.
24:05:14:13	Performance goals and indicators.
24:05:14:14	Participation in assessments.
<u>24:05:14:14.01</u>	<u>Alternate assessments.</u>
24:05:14:15	Reports relating to assessments.
<u>24:05:14:15.01</u>	<u>Use of universal design in assessments.</u>
24:05:14:16	Suspension and expulsion rates.
<u>24:05:14:17</u>	<u>Access to instructional materials.</u>
<u>24:05:14:18</u>	<u>State advisory panel - - General.</u>
<u>24:05:14:19</u>	<u>State advisory panel - - Membership.</u>
<u>24:05:14:20</u>	<u>State advisory panel - - Duties.</u>
<u>24:05:14:21</u>	<u>Prohibition on mandatory medication.</u>

**24:05:14:01. Interagency agreements.** The department shall develop and implement interagency agreements with the Departments of Social Services, Health, Human Services, and Corrections for the purpose of describing the role that each of these agencies plays in providing or paying for special education or related services for children with disabilities. These interagency agreements shall define the financial responsibility of each agency for providing children with disabilities with free appropriate public education, establish procedures for resolving interagency disputes among agencies that are parties to the agreement, and establish conditions, terms, and procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

The financial responsibility of each noneducational public agency described in this section, including the state ~~medical~~ Medicaid agency and other public insurers of children with disabilities, precedes the financial responsibility of local educational agencies or the state agency responsible for developing the child's individualized education program.

This section does not allow an agency to reduce medical and other assistance available to children with disabilities to receive services that are also part of a free appropriate public education or to alter the requirements and eligibility of a child with

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disabilities under Title V, maternal and child health; Title XIX, Medicaid; or Title XXI of the Social Security Act; or under any other public benefits or insurance program including those required by federal statute.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:14:01.01. Coordination of services.** Interagency agreements described in § 24:05:14:01 also include policies and procedures for agencies to use in determining and identifying the interagency coordination responsibilities of each agency in order to promote the coordination and timely and appropriate delivery of services described in § 24:05:14:01.02.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:01.02. Obligation of noneducational public agencies.** If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to § 24:05:14:01, to provide or pay for any services that are also considered special education or related services such as assistive technology devices and services, related services described under § 24:05:27:16, supplementary aids and services, and transition services described under § 24:05:27:13.02, that are necessary for providing a free appropriate public education to children with disabilities within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangements pursuant to 24:05:14:01.

A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the school district or state agency responsible for developing the student's IEP shall provide or pay for these services to the student in a timely manner. The school district or state agency is authorized to ~~may then~~ claim reimbursement for the services from the public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance to the terms of the interagency agreements described in § 24:05:14:01.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**Draft**

**24:05:14:01.03. Children with disabilities covered by public benefits or insurance.** A public agency may use the Medicaid or other public benefits or insurance ~~benefits~~ programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.05, may pay the cost that the parent otherwise would be required to pay; ~~and~~

(3) May not use a student's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(c) Increase premiums or lead to the discontinuation of benefits or insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(4) Must obtain parental consent consistent with 24:05:29:13 each time that access to public benefits or insurance is sought; and

(5) Notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:01.04. Children with disabilities covered by private insurance.** With regard to services required to provide FAPE to an eligible student under this article, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this article. Each time the public agency proposes to access the parent's private insurance proceeds, it must:

**Draft**

- (1) Obtain parent consent in accordance with this article; and
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37.1.1

**Law Implemented:** SDCL 13-37.1.1

**24:05:14:01.05. Use of part B funds for insurance costs.** If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance if the parent would incur a cost for a specified service required under this article, to ensure FAPE, the public agency may use funds obtained through Part B of IDEA to pay for the service.

To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use funds obtained through Part B of IDEA to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public benefits or insurance or private insurance may not be treated as program income for purposes of 34 C.F.R. § 80.25.

If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this article, those funds are not considered "state or local" funds for purposes of the maintenance of effort provisions in this article.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:02. State Advisory Panel for Children with Disabilities.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:03. Terms of panel members.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:04. Composition of panel.** Repealed.

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**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:05. Appointment procedure.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 8, 1993; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:06. State advisory panel functions.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:07. Officers.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:08. Minutes.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:09. Notice of meetings.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:10. Interpreters.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:11. Expenses of members.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:12. Reports.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:14:13. Performance goals and indicators.** The department shall have in effect established goals for the performance of children with disabilities in the state that:

**Draft**

(1) Promote the purposes of Part B of the Individuals with Disabilities Education Act; and

~~(2) Are consistent, to the maximum extent appropriate, with other goals and standards for all children established by the state.~~

(2) Are the same as the state's objectives for progress by children in its definition of adequate yearly progress, including the state's objectives for progress by children with disabilities, under the ESEA;

(3) Address graduation rates and dropout rates, as well as such other factors as the state may determine; and

(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the state;

The department shall have in effect established performance indicators that the state shall use to assess progress toward achieving the above goals including measurable annual objectives for progress by children with disabilities under the ESEA. ~~that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates. Every two years, Annually,~~ the department shall report to the U.S. Secretary of Education and the public on the progress of the state, and of children with disabilities in the state, toward the goals established under this section, which may include elements of the reports required under the ESEA. ~~Based on its assessment of that progress, the department shall revise its state improvement plan under subpart 1 of Part D of the Individuals with Disabilities Education Act as may be needed to improve the state's performance, if the division receives assistance under that subpart.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:14. Participation in assessments.** All children with disabilities shall be included in all general state and district-wide assessments programs, including assessments described in the ESEA, with appropriate accommodations and modifications alternate assessments if where necessary and as indicated in their respective IEPs. As appropriate, the department or local educational agencies shall develop guidelines for the provision of appropriate accommodations.

~~(1) Develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in state and district-wide assessments;~~

~~—— (2) Develop alternate assessments; and~~

~~—— (3) Beginning not later than July 1, 2000, conduct alternate assessments.~~

**Draft**



**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:14.01. Alternate assessments.** As appropriate, the department or local shall develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under this section, with accommodations as indicated in their respective individualized education programs.

The guidelines shall provide for alternate assessments that:

- (1) Are aligned with the state's challenging academic content standards and challenging student academic achievement standards; and
- (2) If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with disabilities against those standards.

The state shall conduct the alternate assessments described in this section.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:14:15. Reports relating to assessments.** As appropriate, the department or local educational agency shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

- (1) The number of children with disabilities participating in regular assessments, and ~~in alternate assessments and~~ the number of those children who were provided accommodations in order to participate in those assessments;

**Draft**

(2) The number of children with disabilities participating in alternate assessments described in 24:05:14:14.01(1);

(3) The number of children with disabilities participating in alternate assessments described in 24:05:14:14.01(2); and

(4) The performance results of children with disabilities on regular assessments and alternate assessments, if: ~~doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.~~

(a) The number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information; and

(b) Reporting that information will not reveal personally identifiable information about an individual student, compared with the achievement of all children, including children with disabilities, on those assessments.

~~Reports to the public shall include aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on the performance of children with disabilities.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:15.01. Use of universal design in assessments.** As appropriate, the department or local educational agency shall, to the extent feasible, use universal design principles in developing and administering any assessments under this section.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:14:16. Suspension and expulsion rates.** The department shall examine data, including data disaggregated by race and ethnicity, from local education agencies and other state agencies, as appropriate, to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies in the state or ~~and~~ compared to the rates for nondisabled children within the agencies. If discrepancies are occurring, the department

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shall review and, if appropriate, revise or require the affected local education agency or state agency to revise its policies, procedures, and practices relating to:

- (1) The development and implementation of individualized education programs;
- (2) The use of positive behavioral interventions and supports; and
- (3) Procedural safeguards to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act, Part B.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1

**24:05:14:17. Access to instructional materials.** The department shall adopt the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons or other persons with print disabilities.

In accordance with the department's decision to coordinate with the National Instructional Materials Accessibility Center (NIMAC), the department:

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:

(a) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(b) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

In carrying out this section, the department, to the maximum extent possible, shall work collaboratively with the state agency responsible for assistive technology programs.

**Source:** .

**General Authority:**

**Law Implemented:**

**24:05:14:18. State advisory panel - - General.** The department shall establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

**Source:** .

**General Authority:**

**Law Implemented:**

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**24:05:14:19. State advisory panel - - Membership.** The advisory panel must consist of members appointed by the Governor, or any other official authorized under state law to make such appointments, be representative of the state population and be composed of individuals involved in, or concerned with the education of children with disabilities, including:

- (1) Parents of children with disabilities, ages birth through 26;
- (2) Individuals with disabilities;
- (3) Teachers;
- (4) Representatives of institutions of higher education that prepare special education and related services personnel;
- (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act;
- (6) Administrators of programs for children with disabilities;
- (7) Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- (8) Representatives of private schools;
- (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- (10) A representative from the state child welfare agency responsible for foster care; and
- (11) Representatives from the state juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities, ages birth through 26.

**Source: .**

**General Authority:**

**Law Implemented:**

**24:05:14:20 State advisory panel - - Duties.** The advisory panel must:

- (1) Advise the department of unmet needs within the state in the education of children with disabilities;
- (2) Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;
- (3) Advise the department in developing evaluations and reporting on data to the U.S. Secretary of Education under section 618 of the IDEA;
- (4) Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and
- (5) Advise the department in developing and implementing policies relating to the coordination of services for children with disabilities.

**Source: .**

**General Authority:**

**Draft**

**Law Implemented:**

**24:05:14:21. Prohibition on mandatory medication.** The department shall prohibit state and school district personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act for a child as a condition of attending school, receiving an evaluation under chapter 24:05:25, or receiving services under this article.

Nothing in this section shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under chapter 24:05:22 related to child find.

**Source: .**

**General Authority:**

**Law Implemented:**

**Draft**

## CHAPTER 24:05:15

### **APPEALS** **STATE COMPLAINTS**

#### Section

24:05:15:01	<del>Appeal procedures</del> <u>Repealed.</u>
24:05:15:02	Complaint.
24:05:15:02.01	<u>Additional complaint content</u>
24:05:15:02.02	<u>Remedies.</u>
24:05:15:03	Complaint procedure.
24:05:15:04	Repealed.
24:05:15:05	Complaint against a <del>subgrantee.</del> <u>school district.</u>
24:05:15:06	Time limits.
24:05:15:07	Information about complaint procedures.
24:05:15:08	Complaints and due process hearings.

**~~24:05:15:01. Appeal procedures.~~** ~~The department shall follow the procedure in SDCL 1-26 on appeals and this chapter on complaints.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:15:02. Complaint.** A complaint is a written signed statement by an individual or organization, including an individual or organization from another state, containing a statement that the ~~state education agency~~ department of education or its ~~subgrantee~~ a school district has violated a requirement of federal or state statutes or regulations that apply to a program and a statement of the facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year before to the date the complaint is received by the department. ~~unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years before to the date the complaint is received by the department.~~

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:15:02.01. Additional complaint content.** The written signed statement required under 24:05:15.02 shall also include:

- (1) The signature and contact information for the complainant; and
- (2) If alleging violations with respect to a specific child:
  - (a) The name and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; and
  - (e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:15:02.02. Remedies.** In resolving a complaint in which it has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

- (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the student such as compensatory services or monetary reimbursement; ~~How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student;~~ and
- (2) Appropriate future provision of services for all students with disabilities.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.

**Law Implemented:** SDCL 13-37-1.

**24:05:15:03. Complaint procedure.** An organization or individual may file a written, signed complaint with the state director of special education.

The party filing the complaint shall forward a copy of the complaint to the school district serving the child at the same time the party files the complaint with the division.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:15:04. Complaint against the state.** Repealed.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:15:05. Complaint against a ~~subgrantee~~ school district.** If the complaint is against a ~~subgrantee~~, school district the following steps shall be taken:

(1) The state director of special education shall appoint a complaint investigation team from the department's ~~Office of Special Education Programs~~. The team may conduct an independent on-site investigation if it determines that one is necessary;

(2) The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the school district with the opportunity to respond to the complaint, including, at a minimum:

(a) At the discretion of the school district, a proposal to resolve the complaint;  
and

(b) An opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation consistent with this article;

(4) The complaint team shall make a recommendation to the state director of special education;

(5) After reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;

(6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;

(7) If the complaint is valid, the ~~secretary~~ state director of special education shall find the ~~subgrantee~~ school district out of compliance with federal and state statutes and rules. ~~and shall so notify the Office of Accountability;~~

(8) If corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the ~~subgrantee~~; school district;

(9) When the ~~subgrantee~~ school district demonstrates completion of required correction action, the department's ~~Office of Accountability~~ Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to the ~~subgrantee~~ school district; and

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(10) Documentation supporting the corrective actions taken by a subgrantee school district shall be maintained by ~~the Office of~~ Special Education Programs and incorporated into the state's monitoring process.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Department of Education Rules 34 C.F.R. §§ 300.151-153 ~~300.660-662~~.

**24:05:15:06. Time limits.** All complaints must be resolved within 60 days after receipt of the complaint by the state director of special education except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances as determined by the state director of special education, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and the school district involved in the complaint agree to engage in mediation in order to attempt to resolve the issue(s) specified in the complaint.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:15:07. Information about complaint procedures.** ~~The Office of~~ Special Education Programs shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities ~~and information~~ about the state's complaint procedures by taking the following actions:

- (1) Conducting parent surveys through the state's monitoring process;
- (2) Providing copies of the state's procedures to parent and advocacy groups across the state;
- (3) Notifying local school districts through statewide memoranda;
- (4) Presenting state procedures at statewide conferences; and
- (5) Disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

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**Law Implemented:** SDCL 13-37-1.1.

**24:05:15:08. Complaints and due process hearings.** If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the department shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the hearing decision is binding on that issue and the department shall inform the complainant to that effect. A complaint alleging a ~~public agency's~~ school district's failure to implement a due process decision must be resolved by the department.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.

**Law Implemented:** SDCL 13-37-1.

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## CHAPTER 24:05:16

### PERSONNEL DEVELOPMENT AND STANDARDS

#### Section

24:05:16:01	<del>Comprehensive system of personnel development.</del> <u>Repealed</u>
24:05:16:01.01	<del>Repealed.</del>
24:05:16:01.02	<del>Adequate supply of qualified personnel</del> <u>Repealed.</u>
24:05:16:01.03	<del>Improvement strategies.</del> <u>Repealed.</u>
24:05:16:02	<del>Definitions.</del> <u>Repealed.</u>
24:05:16:03 and 24:05:16:04	<del>Repealed.</del>
24:05:16:05	Staff development component in school district's comprehensive plan.
24:05:16:06 and 24:05:16:07	<del>Repealed.</del>
24:05:16:08	<del>Content of personnel needs assessment</del> <u>Repealed.</u>
24:05:16:08.01	<del>Personnel needs assessment—</del>
Determination of qualified personnel.	<del>Repealed.</del>
24:05:16:08.02 to 24:05:16:15	<del>Repealed.</del>
24:05:16:16	<del>Personnel standards, qualifications.</del>
<u>24:05:16:16.01</u>	<u>Related services personnel.</u>
<u>24:05:16:16.02</u>	<u>Paraprofessionals and assistants.</u>
<u>24:05:16:16.03</u>	<u>Requirements for highly qualified special education teachers - - Teaching core academic subjects.</u>
<u>24:05:16:16.04</u>	<u>Requirements for highly qualified special education teachers - - General.</u>
<u>24:05:16:16.05</u>	<u>Requirements for highly qualified special education teachers - - Teaching to alternate achievement standards.</u>
<u>24:05:16:16.06</u>	<u>Requirements for highly qualified special education teachers - - Teaching multiple subjects.</u>
<u>24:05:16:16.07</u>	<u>Right of action</u>
24:05:16:16.02	<del>Shortage of personnel.</del> <u>Repealed.</u>
24:05:16:17	<del>Professional standards review.</del> <u>Repealed.</u>
24:05:16:18	<del>Repealed.</del>
24:05:16:19	Early childhood special education teacher.

~~24:05:16:01. Comprehensive system of personnel development.~~ The division shall establish and implement a comprehensive system of personnel development that:

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- ~~—— (1) Is consistent with the purposes of Part B and Part C of the Individuals with Disabilities Education Act;~~
- ~~—— (2) Is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel;~~
- ~~—— (3) Meets the requirements of this chapter; and~~
- ~~—— (4) Is updated at least every five years.~~

~~—— If the state receives a state improvement grant under Part D of the Individuals with Disabilities Education Act, the state shall have met the requirements of this section.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:16:01.01. Comprehensive system of personnel development for early intervention personnel. Repealed.**

**Source:** 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 28, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:16:01.02. Adequate supply of qualified personnel.** The division's comprehensive system of personnel development shall include an analysis of state and local needs for professional development for personnel to serve children with disabilities. The analysis shall include, at a minimum:~~

- ~~—— (1) The number of personnel providing special education and related services;~~
- ~~—— (2) Relevant information on current and anticipated personnel vacancies and shortages, including the number of individuals described in subdivision (1) with temporary certification; and~~
- ~~—— (3) Relevant information on the extent of certification or retraining necessary to eliminate these shortages that is based, to the maximum extent possible, on existing assessments of personnel needs.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~**24:05:16:01.03. Improvement strategies.** The division shall describe the strategies the state will use to address the personnel needs identified under this chapter. The strategies shall include in-service and preservice preparation to ensure that all personnel who work with children with disabilities have the skills and knowledge~~

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~~necessary to meet the needs of the children. The strategies shall include both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services. The division's strategies shall include a description of how:~~

~~—— (1) The state will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the state will work with other states on common certification criteria;~~

~~—— (2) The state will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;~~

~~—— (3) The state will work with institutions of higher education and other entities that, on both a preservice and an in-service basis, prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet state and local needs;~~

~~—— (4) The state will work to develop collaborative agreements with other states for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of such a program of preparation;~~

~~—— (5) The state will work in collaboration with other states, particularly neighboring states, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;~~

~~—— (6) The state will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;~~

~~—— (7) The state will acquire and disseminate to teachers, administrators, school board members, and related services personnel significant knowledge derived from educational research and other sources, and how the state will, if appropriate, adopt promising practices, materials, and technology;~~

~~—— (8) The state will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;~~

~~—— (9) The plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other federal and state laws that address personnel recruitment and training; and~~

**Draft**

~~—— (10) The state will provide for the joint training of parents and special education, related services, and general education personnel.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:16:02. Definitions.** Terms used in this chapter mean:

~~—— (1) "Appropriate professional requirements," those entry level requirements that are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services, including early intervention and early childhood services, and that establish the qualifications for personnel providing such services under this article to infants, toddlers, children, and youth with disabilities who are served by state, local, and private agencies;~~

~~—— (2) "Highest requirements in the state applicable to a specific profession or discipline," the highest entry level academic degree needed for any state approved or state recognized certification, licensing, or registration or other comparable requirements that apply to that profession or discipline;~~

~~—— (3) "Profession or discipline," a specific occupational category that provides special education and related services, including early intervention and early childhood services, to infants, toddlers, children, and youth with disabilities under this article; has been established or designated by the state; has a required scope of responsibility and degree of supervision; and is not limited to traditional occupational categories; and~~

~~—— (4) "Qualified personnel," personnel who meet certification, licensing, registration, or other comparable requirements approved or recognized by the division for the profession or discipline in which the person is providing special education or related services, including early intervention and early childhood services.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~—— **Cross-Reference:** Teacher certification, art 24:02.~~

**24:05:16:03. Scope of the system.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:04. Annual needs assessment.** Repealed.

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**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:05. Staff development component in school district's comprehensive plan.** The staff development section of each school district's comprehensive plan shall include information to demonstrate that:

- (1) All personnel necessary to carry out Part B of the Individuals with Disabilities Education Act within the jurisdiction of the district are appropriately and adequately prepared; and
- (2) District policies and procedures are consistent with the requirements of this chapter, and the Elementary and Secondary Education Act.

~~To the extent that a school district determines appropriate, the district shall contribute to and use the division's comprehensive system of personnel development.~~

Each school district shall take measureable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this article to children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:16:06. Assignment of comprehensive system of personnel development advisory committee.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:07. Administration of the annual personnel needs assessment.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:16:08. Content of personnel needs assessment.** The division shall collect personnel needs assessment data from all public agencies responsible for the provision of special education and related services, including early intervention and early childhood services, to infants, toddlers, children, and youth with disabilities, birth through 21 years.~~

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—— **Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

—— **General Authority:** SDCL 13-37-1.1.

—— **Law Implemented:** SDCL 13-37-1.1.

**24:05:16:08.01. Personnel needs assessment -- Determination of qualified personnel.** In addition to the information collected under § 24:05:16:08, the division shall collect information required to determine:

—— (1) The number and type of personnel, including early intervention and early childhood personnel, employed in the provision of special education and related services, including early intervention and early childhood services, by profession and discipline;

—— (2) The number and type of personnel who are employed with emergency, provisional, or temporary certification, licensure, or other credentials comparable to certification or licensure for the profession or discipline; and

—— (3) The number and type of personnel, including early intervention and early childhood personnel, in each profession or discipline needed and a projection of the numbers of those personnel that will be needed in five years, based on the projections of individuals to be served, retirement, and other departures of personnel from the field and other relevant factors.

—— **Source:** 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

—— **General Authority:** SDCL 13-37-1.1.

—— **Law Implemented:** SDCL 13-37-1.1.

**24:05:16:08.02. Annual personnel needs assessment -- Specific personnel categories.** Repealed.

**Source:** 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:08.03. Annual personnel needs assessment -- Institutions of higher education.** Repealed.

**Source:** 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:09. Report of current and projected personnel needs.** Repealed.

**Draft**



**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:10. Administration of continuing education.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:11. Elements required in the personnel development plan.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:12. Contracts for programs materials and projects.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:13. Dissemination of information.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:14. Annual report of efforts.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:15. Provision of technical assistance.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:16:16. Personnel standards. qualifications.** To ensure that all personnel necessary to carry out the purposes of Part B and Part C of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities, the department shall determine that all personnel providing special education or related services, including related services, paraprofessionals and assistants, early intervention and early childhood personnel, perform these functions

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under state-approved or state-recognized certification or licensure or other comparable requirements that apply to the area in which the person is providing special education or related services. ~~instruction or other service.~~

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:16:16.01. Related services personnel.** The department shall ensure that related services personnel who deliver services in their discipline or profession:

(1) Meet the requirements of this section; and

(2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:16:16.02. Paraprofessionals and assistants.** Paraprofessionals and assistants who are appropriately trained and supervised in accordance with this section may be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act. At a minimum, the following standards must be met:

(1) Paraprofessionals must have a high school diploma or GED;

(2) Paraprofessionals must work within defined roles and responsibilities as identified by the school district;

(3) Paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and

(4) Each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan under § 24:05:16:05.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Example:** Health and safety, behavior strategies.

**24:05:16:16.03. Requirements for highly qualified special education teachers**  
**- - Teaching core academic subjects.** For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in ESEA, except that the requirements for highly qualified also:

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- (1) Include the requirements described in 24:05:16:16.04; and
- (2) Include the option for teachers to meet the requirements of ESEA by meeting the requirements of 24:05:16:16.05 and .06.

A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities under chapter 24:05:32.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:16:16.04. Requirements for highly qualified special education teachers**  
**- - General.** When used with respect to any public elementary school or secondary school special education teacher teaching in South Dakota, highly qualified requires that:

(1) The teacher has obtained full state certification as a special education teacher, or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher.

(2) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) The teacher holds at least a bachelor's degree.

Any public elementary school or secondary school special education teacher teaching in the state, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in this section.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:16:16.05. Requirements for highly qualified special education teachers**  
**- - Teaching to alternate achievement standards.** When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards, highly qualified means the teacher, whether new or not new to the profession, may either:

(1) Meet the applicable requirements of the ESEA for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of the ESEA as applied to an elementary school teacher and have subject matter

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knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:16:16.06. Requirements for highly qualified special education teachers**  
**- - Teaching multiple subjects.** When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either:

(1) Meet the applicable requirements of the ESEA;

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher, which may include a single HOUSSE covering multiple subjects.

A fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:16:16.07. Right of action.** Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this article shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular state or school district employee to be highly qualified, or to prevent a parent from filing a complaint under chapter 24:05:15 about staff qualifications with the department as provided for under this article.

**Source:**

**General Authority:**

**Law Implemented:**

~~**24:05:16:16.02. Shortage of personnel.** School districts shall make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to~~

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~~provide special education and related services to children with disabilities. If there is a shortage of personnel in a geographic area of the state who meet state qualifications, the most qualified individuals available may be hired. These individuals must be making satisfactory progress toward completing the applicable course work necessary to meet state standards. Course work must be completed within three years.~~

~~— The division shall use its comprehensive system of personnel development for addressing shortages and for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the state for a specific profession or discipline.~~

~~— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~— **General Authority:** SDCL 13-37-1.1.~~

~~— **Law Implemented:** SDCL 13-37-1.1.~~

~~**24:05:16:17. Professional standards review.** The division shall review the professional requirements in the state necessary for the provision of special education or special education and related services, including early intervention and early childhood services. This professional standards review includes the standards of the Division of Education Services and Resources, the Division of Vocational Rehabilitation, the Department of Health, the Department of Human Services, the State Board of Medical and Osteopathic Examiners, the State Board of Examiners of Psychologists, the State Board of Optometry, and any other body responsible for licensure or certification. In conducting this review, the division must do the following:~~

~~— (1) Determine the highest standards applicable to each profession or discipline;~~

~~— (2) Identify those professions or disciplines for which the highest requirements of the state do apply;~~

~~— (3) Identify those professions or disciplines for which the highest professional standards of the state do not apply; and~~

~~— (4) For those professions or disciplines for which the highest requirements of the state do not apply, detail steps the state is taking to require the retraining or hiring of personnel that meet the appropriate professional requirements in the state.~~

~~— **Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~— **General Authority:** SDCL 13-37-1.1.~~

~~— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:16:18. Director of special education.** Repealed.

**Source:** 18 SDR 158, effective March 31, 1992; repealed, 20 SDR 33, effective September 8, 1993.

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**24:05:16:19. Early childhood special education teacher.** ~~By July 1, 1997,~~ A school district that is operating an early childhood special education program must employ a teacher who meets all the requirements of § 24:02:03:21.02.

**Source:** 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-1-12.1.

**Law Implemented:** SDCL 13-37-1.1.

## CHAPTER 24:05:17

### CHILD COUNT

#### Section

24:05:17:01	State-wide coordination of child find and data collection activities.
24:05:17:02	Federal child count procedures under Part B of the Individuals with Disabilities Education Act.
24:05:17:03	Annual report of children served.
24:05:17:04	Reporting of multiple disabilities.
24:05:17:05	Children included in report.
24:05:17:06	<del>Children not included in report</del> <u>Repealed.</u>
24:05:17:07	Repealed.
24:05:17:08	Written notice provided by Office of Data Collection.
24:05:17:09	Return of information.
24:05:17:10	<u>Overidentification and disproportionality.</u>

**24:05:17:01. State-wide coordination of child find and data collection activities.** The Department of Educational Services and Supports Resources, Office of Special Education Programs, is the state agency responsible for coordinating the planning and implementation of state-wide child find and data collection activities. Child identification procedures are a required component in each school district's comprehensive plan for special education. The district shall provide information in the form required by ~~the Office of Special Education Programs~~.

This process combined with the state's federal child count procedures serve as the basis for developing the child identification system for the Individuals with Disabilities Education Act, Part B. These procedures are extended to agencies other than school districts through the use of interagency agreements.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:17:02. Federal child count procedures under Part B of the Individuals with Disabilities Education Act.** The Office of Educational Services and Support, Office of Special Education, shall do the following:

(1) Direct local educational agencies and other educational institutions to count the number of children with disabilities receiving special education and related services at the

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time specified by the U.S. Secretary of Education on forms provided; ~~prior to the federal reporting date of February 1;~~

(2) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(3) Aggregate the data from the count obtained from each agency and institution and prepare the reports required under chapter 24:05:17; and

(4) Ensure that documentation is maintained which enables the state and the U. S. secretary of education to audit the accuracy of the count.

The data required by the U.S. Secretary of Education shall be publicly reported by the department in a manner that does not result in disclosure of personally identifiable child data.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:17:03. Annual report of children served.** In its annual report of children served, the department shall indicate ~~the following:~~ (1) the number of children with disabilities receiving special education and related services on December 1 of that school year.

~~(2) The number of children with disabilities aged 3 to 5, inclusive, who are receiving a free appropriate public education;~~

~~—— (3) The number of children with disabilities aged 6 to 17, inclusive, and 18 to 21, inclusive; and~~

~~—— (4) The number of those children with disabilities aged 3 to 21, inclusive, for each year of age, starting with age 3 within each disability category.~~

For the purpose of this section, a child's age is the child's actual age on the date of the child count, December 1.

The department may not report a child under more than one disability category.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:17:04. Reporting of multiple disabilities.** The department shall report a child with deaf-blindness under the category deaf-blindness unless the child is reported as having a developmental delay. The department shall report a child who has more than one disability, other than deaf-blindness, under the category multiple disabilities.

The department shall include in its report a certification signed by the secretary that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Definition of "deaf-blindness," 34 C.F.R. § 300.7(b)(2).

**24:05:17:05. Children included in report.** The department may include children with disabilities in its report who are enrolled in a school or program which is operated or supported by a public agency and which either provides them with both special education and related services or provides them only with special education, if a related service is not required, that meet state standards.

In the case of children with disabilities enrolled by their parents in private schools, the public agency provides them with special education or related services, or both, consistent with chapter 24:05:32 that meet state standards.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:17:06. Children not included in report.** The division may not include children with disabilities in its report who meet the following conditions:~~

- ~~—— (1) Are not enrolled in a school or program operated or supported by a public agency;~~
- ~~—— (2) Are not provided special education that meets state standards;~~
- ~~—— (3) Are not provided with a related service that they need to assist them in benefiting from special education; or~~
- ~~—— (4) Are receiving special education funded solely by the federal government, including children served by the Departments of Interior, Defense, or Education.~~

~~**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~**General Authority:** SDCL 13-37-1.1.~~

~~**Law Implemented:** SDCL 13-1-12.1, 13-37-1.1.~~

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**24:05:17:07. Counting of children on Indian reservations or military facilities.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:17:08. Written notice provided by Office of Data Collection.** The Office of Data Collection shall provide all local education agencies with written notice of the procedures to be followed in counting the number of eligible children receiving special education and related services for the purpose of generating federal funds under the Individuals with Disabilities Education Act, Part B.

At a minimum, this notice shall include the federal definitions of children with disabilities under the Individuals with Disabilities Education Act, Part B, and the criteria for counting children with disabilities as set out in chapter 24:05:17.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** 34 C.F.R. §§ 300.7 and 300.753, September 29, 1992.

**24:05:17:09. Return of information.** Local education agencies shall return information on counting eligible children to the Office of Data Collection. Each local school superintendent shall certify in writing that the information provided is an accurate and unduplicated count of children with disabilities receiving special education or special education and related services on December 1 of each school year. If December 1 falls on Saturday or Sunday, the count shall be taken on the first working day following the weekend.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:17:10. Overidentification and disproportionality.** The department shall provide for the collection and examination of data to determine whether any inappropriate overidentification or significant disproportionality based on race and ethnicity is occurring in the state and in districts of the state with respect to:

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in chapter 24:05:24.01; ~~and~~

**Draft**

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of inappropriate overidentification or significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular settings of these children, the department shall:

- (1) Provide for the review of and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure compliance with the requirements of Part B of the Individuals with Disabilities Education Act;
- (2) Require any district identified under this section to reserve the maximum amount of funds allowable to provide comprehensive coordinated early intervening services to serve children in the district, particularly, but not exclusively, children in those groups that were significantly overidentified under this section; and
- (3) Require the district to publicly report on the revision of policies, practices, and procedures described under this section.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 37-13-1.1.

**Law Implemented:** SDCL 37-13-1.1.

**CHAPTER 24:05:18**

**RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN**

**Section**

- ~~24:05:18:01 — State to notify agencies of responsibility.~~
- ~~24:05:18:02 — Methods for providing notice.~~
- ~~24:05:18:03 — Procedures for identification of misclassified children.~~
- ~~24:05:18:04 — Reevaluation.~~
- ~~24:05:18:05 — Program reviews.~~
- ~~24:05:18:06 — Notice of misclassified students.~~
- ~~24:05:18:07 — Penalty for failure to reimburse.~~
- ~~24:05:18:08 — Right to appeal.~~

~~—— **24:05:18:01. State to notify agencies of responsibility.** The division shall notify all public agencies regarding their responsibility to identify, report, and aid in the recovery of funds appropriated for services provided to misclassified children.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~—— **24:05:18:02. Methods for providing notice.** Notice regarding recovery of funds for misclassified children shall be provided by the division as follows:~~

~~—— (1) Instructions distributed for the December 1 child count shall include a section indicating the school district's responsibility to identify misclassified children and describing the procedures for reporting such children; and~~

~~—— (2) Instructions contained in the local education agency request for the Individuals with Disabilities Act, Part B flow-through support shall contain a statement indicating the district's and other school districts responsibility to identify, report, and aid in the recovery of funds for a misclassified student.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~—— **Cross-References:** To December 1 child count rule, ch 24:05:17; to flow-through support applications rule, ch 24:05:20.~~

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~~24:05:18:03. Procedures for identification of misclassified children.~~ Each public agency must maintain specific documentation as to the identification, evaluation, program, and placement of each child with disabilities. Identification of misclassified students shall be determined through the following means:

~~(1) The annual process conducted by public agencies for updating individual education plans and the reevaluation of students with disabilities done at least once every three years;~~

~~(2) Program administrative reviews implemented by division staff in conformance with the monitoring standards contained in § 24:05:18:05 governing the provision of special education. This review includes an analysis of decisions made as the result of impartial due process hearings;~~

~~(3) Investigations conducted under the state's complaint management system in chapter 24:05:15; and~~

~~(4) The review of district comprehensive plans conducted by division staff.~~

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

~~24:05:18:04. Reevaluation.~~ The secretary may require a local education agency to reevaluate any child whose eligibility for services under Part B is questioned as a result of local or state monitoring or document review or the investigation of a complaint. The local agency shall submit requested evaluation data to the Division of Education Services and Resources, Office of Special Education, for review and analysis of the child's eligibility for services under Part B of the Individuals with Disabilities Act.

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

~~24:05:18:05. Program reviews.~~ The division shall conduct program administrative reviews to determine whether students have been classified according to this article. If, as a result of these reviews, the division determines that Individuals with Disabilities Education Act, Part B funds have been made available to an eligible public agency as the result of a misclassified child, the division shall begin recovery procedures.

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~General Authority: SDCL 13-37-1.1.~~

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—— **Law Implemented:** SDCL 13-37-1.1.

—— **Cross-Reference:** Recovery of funds for misclassified children, ch 24:05:18.

—— **24:05:18:06. Notice of misclassified students.** A formal notice shall be transmitted to the public agency identified as reporting misclassified students. The notice shall include a statement that includes the following:

- (1) The number of students misclassified;
- (2) The means by which the misclassification of students was discovered;
- (3) How, in each instance, the occurrence of misclassification was determined; and
- (4) The amount, schedule, and method of returning funds for misclassified students to the division.

—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

—— **General Authority:** SDCL 13-37-1.1.

—— **Law Implemented:** SDCL 13-37-1.1.

—— **24:05:18:07. Penalty for failure to reimburse.** If the public agency does not reimburse the state within 90 days after notification of exception, the division may withhold future Individuals with Disabilities Education Act, Part B funds to which the public agency is entitled or may take other action to recover the funds. The division shall use state statutory authority contained in SDCL 4-11 authorizing the recovery of funds in cases of public agency refusal to repay misapplied funds.

—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

—— **General Authority:** SDCL 13-37-1.1.

—— **Law Implemented:** SDCL 13-37-1.1.

—— **24:05:18:08. Right to appeal.** If a school district disagrees with the findings of misclassification determined by the division, the district may request a hearing by following the contested case procedures in SDCL 1-26.

—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

—— **General Authority:** SDCL 13-37-1.1.

—— **Law Implemented:** SDCL 13-37-1.1.

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## CHAPTER 24:05:19

### ALLOCATION AND USE OF FUNDS

#### Section

24:05:19:01	Local education agency entitlements.
24:05:19:02	Reallocation of local education agency funds.
24:05:19:03	Excess cost.
24:05:19:04	Nonsupplanting.
24:05:19:05	Proscribed use of funds.
24:05:19:05.01	Exception to maintenance of effort.
<del>24:05:19:05.02</del>	<del>Use of federal funds in certain fiscal years. <u>Repealed.</u></del>
24:05:19:05.03	Permissive use of funds.
<u>24:05:19:05.03.01</u>	<u>Adjustment to local fiscal efforts in certain fiscal years.</u>
<u>24:05:19:05.03.02</u>	<u>Early intervening services - - General.</u>
<u>24:05:19:05.03.03</u>	<u>Early intervening services - - Activities.</u>
<u>24:05:19:05.03.04</u>	<u>Early intervening services - - Reporting.</u>
<u>24:05:19:05.03.05</u>	<u>Schoolwide programs under title 1 of ESEA - - General.</u>
<u>24:05:19:05.03.06</u>	<u>Schoolwide programs under title 1 of ESEA - - Funding.</u>
<u>24:05:19:05.03.07</u>	<u>Schoolwide programs under title 1 of ESEA - - Meeting other Part B requirements.</u>
<del>24:05:19:05.04</del>	<del>Coordinated services system. <u>Repealed.</u></del>
24:05:19:06 and 24:05:19:07	Repealed.
24:05:19:08	Valid obligations enforceable.
24:05:19:08.01	Prohibition against commingling.
24:05:19:08.02	State-level nonsupplanting.
24:05:19:08.03	Maintenance of state financial support.
24:05:19:09	Funds for state administration.
24:05:19:10	Allowable costs.
24:05:19:11	Use of state agency allocations - - <u>Other state-level activities.</u>
<del>24:05:19:12</del>	<del>Subgrants for capacity building and improvement. <u>Repealed.</u></del>
24:05:19:13	<del>Division discretion in awarding subgrants. <u>Repealed.</u></del>

**24:05:19:01. Local education agency entitlements.** From the total amount of funds received by the state education agency under the Individuals with Disabilities Education Act, Part B, ~~local education agencies are entitled to 75 percent of this amount contingent upon the submission of policies and procedures that meet the requirements of this article. The amount of funds a local education agency receives is based on the total number of certified children with disabilities aged 3 to 21, inclusive, receiving special education and related services regulated by the division. For any fiscal year in which~~

**Draft**

~~federal funds for IDEA Part B exceed \$4.9 billion dollars, the state education agency shall distribute to local education agencies funds according to the following criteria:~~

for any fiscal year, the department shall distribute any funds not reserved under 24:05:19:09, 24:05:19:10, and 24:05:19:11 to local education agencies that have established their eligibility under this article for use in accordance with Part B of the IDEA. The department shall distribute these federal funds to local education agencies according to the following criteria:

(1) Local education agencies shall receive 75 percent of the amount they would have received ~~in the fiscal year preceding the first fiscal year in which this section applies~~ under section 611 of IDEA for fiscal year 1999, as that section was then in effect;

(2) Eighty-five percent of remaining funds shall be allocated to local education agencies based on the relative numbers of children enrolled in public and private elementary and secondary schools within each local education agency's jurisdiction; and

(3) Fifteen percent of remaining funds shall be allocated to local education agencies based on their relative numbers of children living in poverty, as determined by the state education agency.

~~The state education agency shall apply on a uniform basis across all local education agencies the best data that is available to it on numbers of children enrolled in public and private elementary schools and the numbers of children living in poverty.~~

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:02. Reallocation of local education agency funds.** If the department determines that a local education agency is adequately providing a free appropriate public education to all certified children with disabilities residing within the legal boundaries of the district with state and local funds, the department may reallocate a portion or all of a district's Individuals with Disabilities Education Act, Part B funds that are not needed by that district to provide FAPE to other districts in the state which are not adequately providing special education and related services to all its resident certified children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:19:03. Excess cost.** A local education agency may only use funds under the Individuals with Disabilities Education Act, Part B, for excess costs of providing special education and related services to certified children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:04. Nonsupplanting.** Each local education agency must use Individuals with Disabilities Education Act, Part B funds to supplement other federal, ~~and, to the extent practicable, increase the level of~~ state and local funds expended for the education of certified children with disabilities. Federal IDEA Part B funds may not be used to supplant state, other federal, and local funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05. Proscribed use of funds.** Except as provided in §§ 24:05:19:05.01 and 24:05:19:05.03.01, Individuals with Disabilities Education Act, Part B funds may not be used to reduce the level of expenditures made by a local education agency from local funds below the level of expenditures for the fiscal year immediately preceding the fiscal year for which the local education agency is applying for funds for the education of children with disabilities.

A school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets ~~expends~~, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available.

- (1) Local funds only; or
- (2) The combination of state and local funds.

A district that relies on subdepartment (1) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, ~~if that year is on or after July 1, 1997. If later, a district must use the most recent fiscal year for which information is available, and ensure that~~ the standard in subdivision (1) of this section was used to establish compliance.

The department may not consider any expenditures made from funds provided by the federal government for which the department is required to account to the federal

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government or for which the district is required to account to the federal government directly or through the department in determining a district's compliance with the requirements of this section.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.01 Exception to maintenance of effort.** Notwithstanding the restrictions in 24:05:19:05, a school district may reduce the level of expenditures by the district under Part B of the Individuals with Disabilities Education Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, ~~who are replaced by qualified, lower-salaried staff;~~

(2) A decrease in the enrollment of students with disabilities;

(3) The termination of the obligation of the district, consistent with this chapter, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district;

(b) Has reached the age at which the obligation of the district to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education; ~~or~~

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities; or

(5) The assumption of cost by the extraordinary costs fund operated by the department under chapter 24:05:33.01.

~~In order for a school district to invoke the exception in subdivision (1) of this section, the district must ensure that those voluntary retirements or resignations and replacements are in full conformity with existing school board policies in the district, the applicable collective bargaining agreement in effect at that time, and applicable state statutes.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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~~**24:05:19:05.02. Use of federal funds in certain fiscal years.** For any fiscal year in which federal funds for Part B of IDEA exceeds \$4.1 billion dollars, a school district may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the IDEA that exceeds the amount it received under Part B of the IDEA for the previous fiscal year. The requirements regarding supplanting and maintenance of effort do not apply with respect to the amount that may be treated as local funds under this section.~~

~~—— If the department determines that a school district is not meeting the requirements of this article, the department may prohibit the district from treating funds received under Part B of IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the state constitution or a state statute.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:19:05.03. Permissive use of funds.** Notwithstanding the excess cost, supplementing and supplanting, maintenance of effort, and commingling requirements, IDEA Part B funds provided to a school district may be used for the following activities:

(1) For the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more nondisabled students benefit from these services; ~~Such funds may also be used to develop and implement a fully integrated and coordinated services system in accordance with § 24:05:19:05.05.~~

(2) To develop and implement coordinated, early intervening educational services in accordance with this chapter; and

(3) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:19:05.03.01. Adjustment to local fiscal efforts in certain fiscal years.**

Notwithstanding the excess cost and maintenance of effort requirements, and the exception regarding early intervening services in this chapter, for any fiscal year for which the allocation received by a district exceeds the amount the district received for the previous fiscal year, the district may reduce the level of expenditures, otherwise required, by not more than 50 percent of the amount of that excess.

If a school district exercises the authority under this section, the district must use an amount of local funds equal to the reduction in expenditures under this section to carry out activities that could be supported with funds under the ESEA regardless of whether the district is using funds under the ESEA for those activities.

Notwithstanding the requirements of this section, if the department determines that a district is unable to establish and maintain programs of FAPE that meet the requirements of this article or the department has taken action against the district under chapter 24:05:20, the department must prohibit the district from reducing the level of expenditures under this section for that fiscal year.

The amount of funds expended by a district for early intervening services under this chapter shall count toward the maximum amount of expenditures that the district may reduce under this section.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:19:05.03.02. Early intervening services - - General.** A district may not use more than 15 percent of the amount the district receives under Part B of the IDEA for any fiscal year, less any amount reduced by the district pursuant to 24:05:19:05.03.01, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the IDEA or to delay appropriate evaluation of a child suspected of having a disability.

Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

**Source:**

**General Authority:**

**Law Implemented:**

**Draft**

**24:05:19:05.03.03. Early intervening services - - Activities.** In implementing coordinated, early intervening services under this section, a school district may carry out activities that include:

(1) Professional development, which may be provided by entities other than school districts, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:19:05.03.04. Early intervening services - - Reporting.** Each school district that develops and maintains coordinated, early intervening services under this section must annually report to the department on:

(1) The number of children served under this section who received early intervening services; and

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two year period.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:19:05.03.05. Schoolwide programs under title 1 of ESEA - - General.** Notwithstanding the provisions of excess cost and maintenance of effort, or any other provision of Part B of the IDEA, a school district may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed:

(1)(a) The amount received by the district under Part B of the IDEA for that fiscal year; divided by

(b) The number of children with disabilities in the jurisdiction of the district; and multiplied by

(2) The number of children with disabilities participating in the schoolwide program.

**Source:**

**General Authority:**

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**Law Implemented:**

**24:05:19:05.03.06. Schoolwide programs under title 1 of ESEA - - Funding.**

The funds described in 24:05:19:05.03.05 are subject to the following conditions:

(1) The funds must be considered as federal Part B funds for purposes of the calculations required under excess cost, supplementing and supplanting.

(2) The funds may be used without regard to the other requirements of this chapter.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:19:05.03.07. Schoolwide programs under title 1 of ESEA - - Meeting other Part B requirements.**

Except as provided in 24:05:19:05.03.06, all other requirements of Part B of the IDEA must be met by a school district using Part B funds in accordance with 24:05:19:05.03.05, including ensuring that children with disabilities in schoolwide program schools:

(1) Receive services in accordance with a properly developed IEP; and

(2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

**Source:**

**General Authority:**

**Law Implemented:**

~~**24:05:19:05.04. Coordinated services system.** A school district may not use more than five percent of the amount the district receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including students with disabilities and their families. In implementing a coordinated services system under this section, a school district may carry out activities that include:~~

~~—— (1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;~~

~~—— (2) Service coordination and case management that facilitate the linkage of individualized education programs under Part B of IDEA and individualized family services plans under Part C of IDEA with individualized service plans under multiple federal and state programs;~~

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~~—— (3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under IDEA; and~~

~~—— (4) Interagency personnel development for individuals working on coordinated services.~~

~~—— If a school district is carrying out a coordinated services project under Title XI of the Elementary and Secondary Education Act of 1965 as amended to November 1, 1999, and a coordinated project under Part B of IDEA in the same schools, the district or agency shall use the amounts under this section in accordance with the requirements of that title.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:19:06. Displacing state or local funds proscribed. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:19:07. Comparable services. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:19:08. Valid obligations enforceable.** Nothing in this article relieves an insurer or a similar third party from an otherwise valid obligation to provide or pay for services provided to a child with disabilities.

Consistent with the IEP requirements in this article regarding the provision of services in a timely manner, the department shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

If placement in an approved public or private residential program is necessary to provide special education and related services to a child with disabilities, the program, including nonmedical care and room and board, must be provided at no cost to the parent of the child.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:19:08.01. Prohibition against commingling.** Funds under Part B of IDEA may not be commingled with state funds.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1

**24:05:19:08.02. State-level nonsupplanting.** Except as provided in § 24:05:19:05.02, federal funds paid to the state under Part B of the Individuals with Disabilities Education Act, shall be used to supplement and in no case supplant, federal, state, and local funds (including funds that are not under the direct control of the state or local education agencies) expended for special education and related services provided to students with disabilities.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:08.03. Maintenance of state financial support.** ~~On either a total or per capita basis,~~ The state may not reduce the amount of state financial support for special education and related services for students with disabilities, or financial support otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.

In complying with state requirements for commingling, nonsupplanting and maintenance of effort, the state may not use funds paid to it under Part B of IDEA to satisfy state-law mandated funding obligations to school districts, including funding based on student attendance or enrollment, or inflation.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:09. Funds for state administration.** ~~The state may use five percent of the total state allotment in any fiscal year under Part B of the Individuals with Disabilities Education Act, as in effect on June 4, 1997, or \$500,000, whichever is greater, for administrative costs related to carrying out the Act. This includes administrative costs for Section 619, Part B of IDEA, Preschool Grants, and Part C of IDEA, Infants and Toddlers with Disabilities. In addition, these funds may be used for the coordination of services with other programs that serve children with disabilities, including the provision of technical assistance. However, this amount may not be greater than 25 percent of the state's total allotment for the fiscal year under Part B of the Act.~~

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The state for each fiscal year may set aside an amount equal to or less than \$850,000 adjusted cumulatively for inflation for state administration under Part B of the IDEA.

Prior to expenditure of funds under this section, the state must certify to the U.S. Secretary of Education that the arrangements to establish responsibility for services pursuant to chapter 24:05:14 are current.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:10. Allowable costs.** The department may use funds under § 24:05:19:09 for the following costs:

~~(1) Administration of state activities and planning at the state level, including planning or assisting in the planning of programs or projects for the education of children with disabilities;~~

~~—— (2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;~~

~~—— (3) Technical assistance to local educational agencies to meet the requirements of this article;~~

~~—— (4) Leadership services for the program supervision and management of special education activities for children with disabilities; and~~

~~—— (5) Other state leadership activities and consultative services.~~

(1) Administering the Part B, Part C, and preschool section 619 programs under the IDEA; and

(2) Coordinating activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:11. Use of state agency allocations - - Other state-level activities.** The state may use an amount equal to nine and one-half percent, adjusted cumulatively for inflation each fiscal year, the portion of its allocation that it does not use for administration under §§ 24:05:19:09 and 24:05:19:10 for other state-level activities. Some portion of these funds shall be used to carry out monitoring, enforcement,

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~~complaint investigation, and direct and support services and for the administrative costs of the state's monitoring and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985. Additional uses of these funds include:~~

~~the establishment and implementation of the mediation process required by this article, including providing for the costs of mediators and support personnel.~~

~~(2) Activities at the state and local levels to meet the performance goals established by the state and to support the development and implementation of the state improvement plan under subpart 1 of Part D of the IDEA, state program improvement grants for children with disabilities, if the state receives funds under that subpart;~~

~~—— (3) To supplement other amounts used to develop and implement a statewide coordinated services system designed to improve results for students and families, including students with disabilities and their families, but not to exceed one percent of the amount received by the state under Section 611 of the IDEA, authorization, allotment, use of funds, and authorization of appropriations. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the state under Part C of the IDEA, infants and toddlers with disabilities; and~~

~~—— (4) For subgrants to school districts for capacity building and improvement.~~

~~—— Direct services are services provided to a child with disabilities by the state directly, by contract, or through other arrangements.~~

~~—— Support services include implementing the comprehensive system of personnel development, recruitment, and training of mediators, hearing officers, and surrogate parents. It also includes public information and parent training activities related to a free appropriate public education for children with disabilities.~~

~~—— Of the funds the division retains under this section, the division may use the funds directly or distribute them to districts on a competitive, targeted, or formula basis.~~

Funds reserved under this section also may be used to carry out the following activities:

(1) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(2) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(3) To assist school districts in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(4) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(5) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(6) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(7) To assist districts in meeting personnel shortages;

(8) To support capacity building activities and improve the delivery of services by school districts to improve results for children with disabilities;

(9) Alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities, students enrolled in state-operated or state-supported schools;

(10) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with the ESEA; and

(11) To provide technical assistance to schools and school districts and direct services, including supplemental educational services as defined in the ESEA to children with disabilities, in schools or school districts identified for improvement under the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under the ESEA.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:19:12. Subgrants for capacity building and improvement.** Based upon the availability of federal funds under Part B of IDEA for any given fiscal year, the division shall award subgrants to school districts for capacity building and program improvement. School districts may use these federal funds to assist them in providing direct services and in making systemic change to improve results for students with disabilities through one or more of the following:~~

~~—— (1) Direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, and students enrolled in state-operated or state-supported schools;~~

~~—— (2) Addressing needs or carrying out improvement strategies identified in the state's improvement plan under subpart 1 of Part D of the IDEA, state program improvement grants for children with disabilities;~~

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~~—— (3) Adopting promising practices, materials, and technology, based on knowledge derived from educational research and other sources;~~

~~—— (4) Establishing, expanding, or implementing interagency agreements and arrangements between school districts and other agencies or organizations concerning the provision of services to students with disabilities and their families; and~~

~~—— (5) Increasing cooperative problem solving between parents and school personnel and promoting the use of alternative dispute resolution.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~**24:05:19:13. Division discretion in awarding subgrants.** The division may establish priorities in awarding subgrants under § 24:05:19:11.01 to school districts competitively, or on a targeted basis.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**CHAPTER 24:05:20**  
**ELIGIBILITY FOR FEDERAL FUNDS**

Section

24:05:20:01	Notice of availability of funds.
24:05:20:02	Form of notice.
24:05:20:03	Review and approval process.
24:05:20:04	Additional requirements.
24:05:20:05	Repealed.
<del>24:05:20:06</del>	<del>Review by state director.</del> <u>Repealed.</u>
24:05:20:07	Notification of grant award.
24:05:20:08	Amendments to requests.
24:05:20:09	Project evaluation and monitoring.
24:05:20:10	Consolidated requests.
24:05:20:11	Repealed.
24:05:20:12	Additional requirements for consolidated requests.
24:05:20:13	Direct service by department.
24:05:20:14	Direct services.
24:05:20:14.01	Excess cost requirements defined.
<del>24:05:20:15</del>	<del>Retention of records for federal programs.</del> <u>Repealed.</u>
<del>24:05:20:16</del>	<del>Required records of grant funds.</del> <u>Repealed.</u>
<del>24:05:20:17</del>	<del>Required records of program compliance.</del> <u>Repealed.</u>
24:05:20:18	Program monitoring and evaluation.
<u>24:05:20:18.01</u>	<u>State monitoring - - Primary focus.</u>
<u>24:05:20:18.02</u>	<u>State monitoring - - Quantifiable indicators and priority areas.</u>
<u>24:05:20:18.03</u>	<u>State performance plan - - General.</u>
<u>24:05:20:18.04</u>	<u>State performance plan - - Data collection.</u>
<u>24:05:20:18.05</u>	<u>State use of targets and reporting.</u>
24:05:20:19	Collection and analysis of data.
24:05:20:20	Deficiency correction procedures.
<del>24:05:20:20.01</del>	<del>Notification of deficiency.</del> <u>Repealed.</u>

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24:05:20:21	<del>Immediate procedures. Repealed.</del>
24:05:20:22	<del>Division to retain records for three years- Repealed.</del>
24:05:20:23	Compliance.
24:05:20:23.01	<u>State enforcement - - General.</u>
24:05:20:23.02	<u>State enforcement - - Determinations.</u>
24:05:20:23.03	Hearings on eligibility for federal funds.
24:05:20:23.04	Public notice by school district.
24:05:20:24 to 24:05:20:26	Repealed.

**24:05:20:01. Notice of availability of funds.** Annually, the state director of special education shall provide written notice to all local education agencies, state agencies, and applicable cooperatives of the availability of Individuals with Disabilities Education Act, Part B funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:02. Form of notice.** The notice in § 24:05:20:01 shall include the following:

(1) Procedures for applicants to follow in completing and submitting requests for Individuals with Disabilities Education Act, Part B funds;

(2) The objectives of the Individuals with Disabilities Education Act, Part B program;

(3) An offer of technical assistance in completing the request for funds;

(4) A general description of the state's procedures for reviewing and approving requests; and

(5) A statement of a local education agency's obligation to make all documents relating to the eligibility of the district including the request for funds and any evaluations, periodic program plans, or reports required by the state for the Individuals with Disabilities Education Act, Part B project available to parents of children with disabilities and to the general public.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:20:03. Review and approval process.** Requests for funds submitted to the department shall be reviewed by ~~the Office of~~ Special Education Programs for consistency with the Individuals with Disabilities Education Act, Part B requirements.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:04. Additional requirements.** In addition to the content requirements of the request for funds itself, reviewers from ~~the Office of~~ Special Education Programs shall take into account a local education agency's failure to correct an identified deficiency found through state monitoring or a complaint investigation, consider any decision made in a due process hearing which was adverse to the local education agency, and consider any previous decisions that resulted in the withholding of funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:05. Review of recommendations by panel.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:20:06. Review by state director.** Final recommendations shall be submitted to the state director of special education for approval.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:20:07. Notification of grant award.** Once the request for funds is approved, the state director of special education and Office of Finance and Management shall notify a local education agency, in writing, of the following:

- (1) The amount of the grant;
- (2) The period during which the local education agency may obligate funds; and
- (3) The federal requirements that apply to the grant under article 24:05.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:20:08. Amendments to requests.** If a local education agency makes a significant amendment to its request for funds, the local education agency shall follow the procedures provided in § 24:05:20:02 for submitting an original request. The review and approval process, at the state level, shall be the same as that used for an initial request for funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:09. Project evaluation and monitoring.** The department shall annually evaluate projects approved under the Individuals with Disabilities Education Act, Part B, through the review and analysis of required reports submitted by local education agencies including information on the use of Part B funds and the performance of children with disabilities on state performance indicators and goals. In addition, ~~the Office of Special Education Program~~ staff shall review the implementation of local education agency Part B projects during the state's monitoring process.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:10. Consolidated requests.** The department may require local education agencies to submit a consolidated request for payments under the Individuals with Disabilities Education Act, Part B, if it determines that an individual request will be disapproved because the local education agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:11. Size and scope of program.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:12. Additional requirements for consolidated requests.** In addition to the requirements of §§ 24:05:20:01 to 24:05:20:11, inclusive, the following provisions

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are applicable. The department shall also annually notify those districts within the state that may be required to submit a consolidated request:

(1) A consolidated request must meet the same minimum requirements as a single district request and must be signed by the superintendent of each participating school district;

(2) School districts participating in a consolidated request are jointly responsible for implementing a program of free appropriate public education for all their students with disabilities, including the least restrictive environment requirements;

(3) Noncompliance with the Individuals with Disabilities Education Act, Part B requirements by any single school district participating in a consolidated request constitutes noncompliance by all districts involved;

(4) Each school district participating in a consolidated request must use an accounting system that permits identification of the costs paid for under its subgrant;

(5) Excess cost for a consolidated request shall be computed on the basis of the average of the combined minimum amounts each school district spends for elementary and secondary school students; and

(6) The state may not make a subgrant that exceeds the sum of the entitlements of the separate local education agencies.

The provisions of this section only apply to the submission of a consolidated request for Individuals with Disabilities Education Act, Part B funds. They are not applicable to the establishment of cooperative educational service units.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:13. Direct service by department.** The department may not distribute funds to a local education agency if the local education agency, in any fiscal year, meets any one of the following conditions:

(1) ~~Does not submit a request that meets the requirements of the Individuals with Disabilities Education Act, Part B~~ Has not provided the information needed to establish the eligibility of the district or state agency, or elected not to apply for its Part B allotment, under Part B of the IDEA;

(2) Is unable to establish and maintain programs of free appropriate public education that meet the requirements of this article;

(3) Is unable or unwilling to be consolidated with ~~other~~ one or more local educational agencies in order to establish and maintain those programs; or

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(4) Has one or more children with disabilities who can best be served by a regional or state program or service-delivery system designed to meet the needs of those children.

The department shall use undistributed funds to ensure a free appropriate public education to children with disabilities residing in the area served by the local education agency. If the local allotment is not sufficient to ensure FAPE, the department may use whatever funding sources are available in the state to meet the FAPE requirements.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:14. Direct services.** The department may provide special education and related services directly by contract or through other arrangements and at locations it considers appropriate. The excess cost requirements do not apply to the department. The manner in which the education and services are provided must be consistent with the requirements of the Individuals with Disabilities Education Act, Part B, 34 C.F.R. Part 300, including the least restrictive environment provisions.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:14.01. Excess cost requirements defined.** "Excess costs" are those costs that are in excess of the average annual per student expenditure in a local education agency during the preceding school year for an elementary or secondary school student.

Excess costs must be computed after deducting amounts received under Part B of IDEA; Part A of Title I of the Elementary and Secondary Act of 1965 as amended ~~through September 28, 1984~~, or under Parts A and B of Title VII III of that Act; and any state or local funds expended for programs that would qualify for assistance under any of those parts but excluding any amounts for capital outlay or debt service.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:20:15. Retention of records for federal programs.** Records related to federal grant funds and compliance under the Individuals with Disabilities Education Act shall be retained by the state and the subgrantee for three years after completion of the activity for which they use grant or subgrant funds.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

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~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

~~**24:05:20:16. Required records of grant funds.** Records related to grant funds shall be kept that fully show the following:~~

- ~~— (1) The amount of funds under the grant;~~
- ~~— (2) How the funds were used;~~
- ~~— (3) The total cost of the project;~~
- ~~— (4) The share of that cost provided from other sources;~~
- ~~— (5) Other records to facilitate an effective audit;~~
- ~~— (6) Approved project requests;~~
- ~~— (7) Grant award notices; and~~
- ~~— (8) Results of fiscal audits.~~

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~General Authority: SDCL 13-1-12.1, 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

~~**24:05:20:17. Required records of program compliance.** Records related to program compliance shall include the following, at a minimum:~~

- ~~— (1) Interim and final monitoring reports, including correspondence;~~
- ~~— (2) Negotiated corrective actions plans resulting from federal and state monitoring visits;~~
- ~~— (3) Documentation of corrective actions taken by the agency as a result of federal or state monitoring;~~
- ~~— (4) Final resolutions of complaints filed against the state or a subgrantee; and~~
- ~~— (5) Documentation supporting the implementation of a hearing officer's final decision in a due process hearing.~~

~~The individuals responsible for maintaining these program and fiscal records are the state directors of special education and finance and their counterparts at the local level.~~

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

**24:05:20:18. Program monitoring and evaluation.** In conjunction with its general supervisory responsibility under the Individuals with Disabilities Education Act, Part B, the Division Office of Educational Services and Resources Support, Office of Special Education Programs, shall monitor agencies, institutions, and organizations

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responsible for carrying out special education programs in the state, including any obligations imposed on those agencies, institutions, and organizations.

The department is responsible for ensuring:

(1) That the requirements of this article are carried out; and

(2) That each educational program for children with disabilities administered within the state, including each program administered by any other state or local agency, but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior:

(a) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the department; and

(b) Meets the educational standards of the state education agency, including the requirements of this article.

(3) In carrying out this article with respect to homeless children, the requirements of the McKinney-Vento Homeless Assistance Act are met.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.01. State monitoring - - Primary focus.** The department shall monitor the implementation of this article, enforce this article in accordance with 24:05:20:23.02 and annually report on performance under this article.

The primary focus of the department's monitoring activities shall be on:

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

As a part of its responsibilities under this section, the department shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in 24:05:20:18.02, and the indicators established by the U.S. Secretary of Education for the state performance plan.

**Source:**

**General Authority:**

**Law Implemented:**

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**24:05:20:18.02. State monitoring - - Quantifiable indicators and priority areas.**

The department shall monitor school districts using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

- (1) Provision of FAPE in the least restrictive environment;
- (2) Department exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in this article and article 24:14; and
- (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:20:18.03. State performance plan - - General.** The state shall have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the IDEA, and describes how the state will improve such implementation.

The state shall submit the state's performance plan to the U.S. Secretary of Education for approval in accordance with the approval process described in Part B of the IDEA.

The state shall review its state performance plan at least once every six years, and submit any amendments to the U.S. Secretary of Education

As part of the state performance plan, the state shall establish measurable and rigorous targets for the indicators established by the U.S. Secretary of Education under the priority areas described in 24:05:20:18.02.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:20:18.04. State performance plan - - Data collection.** The state shall collect valid and reliable information as needed to report annually to the U.S. Secretary of Education on the indicators established by the U.S. Secretary of Education for the state performance plan.

If the U.S. Secretary of Education permits the state to collect data on specific indicators through state monitoring or sampling, and the state collects the data through state monitoring or sampling, the state shall collect data on those indicators for each school district at least once during the period of the state performance plan.

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Nothing in Part B of the IDEA shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the IDEA.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:20:18.05. State use of targets and reporting.** The state shall use the targets established in the state's performance plan and the priority areas described in 24:05:20:18.02 to analyze the performance of each school district.

The state shall:

(1) Report annually to the public on the performance of each school district on the targets in the state's performance plan; and

(2) Make the state's performance plan available through public means, including by posting on the website of the department, distribution to the media, and distribution through public agencies.

If the state collects performance data through state monitoring or sampling, the state shall include in its report the most recently available performance data on each district, and the date the data were obtained.

The state shall report annually to the U.S. Secretary of Education on the performance of the state under the state's performance plan.

The state shall not report to the public or the U.S. Secretary of Education any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:20:19. Collection and analysis of data.** The department shall collect and analyze information sufficient to identify any deficiency of a public or private agency providing services to eligible children within the state.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:20:20. Deficiency correction procedures.** The department shall require local education agencies to correct deficiencies in program operations that are identified through monitoring as soon as possible, but no later than one year from written identification of the deficiency. The department shall order agencies to take corrective actions and to submit a plan for achieving and documenting full compliance.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:20:20.01. Notification of deficiency.** If the division determines a request to be deficient, the division shall notify the applicant informally of any deficiency in the request and shall give the applicant the opportunity to correct the request. If the applicant is unwilling or unable to change its request or the applicant disagrees with the decision of the division, the division shall send a written formal notice of intent to disapprove the request. The division shall send the notice to the applicant's chief executive officer stating the actions that the applicant must take to correct its request.~~

~~—— **Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~**24:05:20:21. Immediate procedures.** Public agencies shall take the following steps immediately if they are ordered to correct deficiencies:~~

- ~~—— (1) Correct each identified deficiency;~~
- ~~—— (2) Prevent the recurrence of each identified deficiency; and~~
- ~~—— (3) Establish a schedule for achieving full compliance approved by the division.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~**24:05:20:22. Division to retain records for three years.** The division shall maintain monitoring records along with other records needed to show compliance with the program and administrative responsibilities under the Individuals with Disabilities Education Act, Part B, 34 C.F.R. Part 300, for three years after completion of the activity for which it uses Individuals with Disabilities Education Act, Part B funds.~~

~~—— The division shall use available methods for the enforcement of any obligations imposed upon responsible agencies, institutions, and organizations.~~

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— ~~Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

— ~~General Authority: SDCL 13-37-1.1.~~

— ~~Law Implemented: SDCL 13-37-1.1.~~

**24:05:20:23. Compliance.** If an agency either fails to voluntarily take steps to correct an identified deficiency or fails to take any of the corrective actions specified by the department or incorporated in a corrective action plan submitted by the agency and approved by the department, the department must notify that agency of the following:

(1) The failure to voluntarily correct an identified deficiency constitutes a failure on their part to administer their special education program in compliance with federal law;

(2) The actions the department intends to take in order to enforce compliance with state and federal law;

(3) The right to a hearing prior to the department exercise of its enforcement responsibility; and

(4) The consequence the department's enforcement action would have on continued and future state and federal funding of that agency's special education programs.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:23.01. State enforcement - - General.** If the department determines that a school district is not meeting the requirements of Part B of the IDEA, including the targets in the state's performance plan, the department shall prohibit the district from reducing the district's maintenance of effort under chapter 24:05:19 for any fiscal year.

Nothing in this chapter shall be construed to restrict the department from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the IDEA.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:20:23.02. State enforcement - - Determinations.** On an annual basis, based on local district performance data, information obtained through monitoring visits, and other information available, the department shall determine if each school district:

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(1) Meets the requirements and purposes of Part B of the IDEA.

(2) If the department determines, for two consecutive years, that a school district needs assistance in implementing the requirements of Part B of the IDEA, the department takes one or more of the following actions:

(a) Advises the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the Special Education Programs, other offices of the Department of Education, other state agencies, technical assistance providers approved by the department, and other federally funded nonprofit agencies, and requires the district to work with appropriate entities. Such technical assistance may include:

(i) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(b) Identifies the district as a high-risk grantee and impose special conditions on the district's grant under Part B of the IDEA.

(3) If the department determines, for three or more consecutive years, that a district needs intervention in implementing the requirements of Part B of the IDEA, the department shall take the following actions:

(a) Requires the district to prepare a corrective action plan if the department determines that the district should be able to correct the problem within one year; or

(b) Withholds, in whole or in part, any further payments to the district under Part B of the IDEA.

(4) Notwithstanding subdivision (2) or (3) of this section, at any time that the department determines that a district needs substantial intervention in implementing the requirements of Part B of the IDEA or that there is a substantial failure to comply with any condition of the district's eligibility under Part B of the IDEA, the department withholds, in whole or in part, any further payments to the district under Part B of the IDEA.

**Source:**

**General Authority:**

**Law Implemented:**

**Draft**

**24:05:20:23.03. Hearings on eligibility for federal funds.** The applicant's chief executive officer may file a hearing request as follows:

(1) The applicant must request the hearing within 30 days after the action of the department;

(2) Within 30 days after it receives a request, the department shall hold a hearing on the record pursuant to SDCL chapter 1-26 and shall review its action;

(3) No later than 10 days after the hearing the department shall issue its written ruling, including findings of fact and reasons for the ruling;

(4) If the department determines that its action was contrary to state or federal statutes or rules that govern the applicable program, the department shall rescind its action;

(5) If the department does not rescind its final action after a review, the applicant may appeal to the U. S. secretary of education. The applicant shall file a notice of the appeal with the U. S. secretary of education within 20 days after the applicant has been notified by the department of the results of the department's review. If supported by substantial evidence, the decision of the department is final;

(6) The U.S. secretary of education may also issue interim orders to the department as necessary and appropriate pending appeal or review; and

(7) If the U.S. secretary of education determines that the action of the department was contrary to the Individuals with Disabilities Education Act and implementing regulations, the secretary shall issue an order to the department to take appropriate action.

The department shall make available to the applicant during regular business hours all records of the department pertaining to any review or appeal it is conducting under this section, including records of other applicants.

If the department does not comply with any provision of this section, or with any order of the U.S. secretary of education, the secretary shall immediately terminate all assistance to the department under the Individuals with Disabilities Education Act or issue such other orders deemed appropriate to achieve compliance.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:23.04. Public notice by school district.** Any school district in receipt of a notice described in § 24:05:20:23 shall, by means of public notice, take the measures

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necessary to bring the pendency of an action pursuant to § 24:05:20:23 to the attention of the public within the jurisdiction of the district.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:24. Annual evaluation of program effectiveness.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:20:25. Provision of technical assistance.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:20:26. Dissemination of information.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

## CHAPTER 24:05:21

### COMPREHENSIVE PLANS

#### Section

- 24:05:21:01 Local education agency ~~to file~~ comprehensive plans -- Contents.
- 24:05:21:01.01 Exception for prior policies and procedures.
- 24:05:21:01.02 Amendments to policies and procedures.
- 24:05:21:02 Approval of special education program -- Content of review.
- 24:05:21:03 Comprehensive plans serve as district's eligibility for federal funds.
- 24:05:21:04 Purchase of instructional materials.
- 24:05:21:05 Records regarding migratory children with disabilities.

**24:05:21:01. Local education agency ~~to file~~ comprehensive plans -- Contents.**  
Each local education agency must have a current comprehensive plan approved by the school board on file with the district superintendent or designee. Office of Special Education. Documentation supporting the implementation of the local school districts comprehensive plan shall be maintained by the district for review by Special Education Programs staff during onsite monitoring visits. Districts shall update comprehensive plans consistent with § 24:05:21:01.02 and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the Individuals with Disabilities Education Act, Part B, and must include the following:

- (1) Policy on the availability of FAPE;
- (2) Policy on the availability of assistive technology;
- (3) Policy on the availability of extended school year services;
- (4) Full program service goals and procedures, including a timetable for accomplishing the goals;
- (5) Ongoing child identification procedures;
- (6) Referral, Evaluation, parental consent, and placement procedures;
- (7) Procedures for the development, annual review, and revision of the individual educational program for each child;
- (8) Procedures for the provision of nonacademic services and program options;
- (9) Procedures for the provision of physical education;
- (10) Policies on routine checking of hearing aids and external components of surgically implanted medical devices;
- (11) Procedures for least restrictive environment;
- (12) Policies and procedures on confidentiality of information;
- (13) Procedural safeguards, including the following:
  - (a) Opportunity to examine records;
  - (b) Independent educational evaluation;
  - (c) Prior notice and parent consent;

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- (d) Resolution process;
  - (e) Impartial due process hearing;
  - (f) Civil action and reasonable attorney's fees;
  - (g) Child status during proceedings;
  - (h) Surrogate parent procedures;
  - (i) Parent participation in meetings;
  - (j) Procedural safeguards notice;
  - (k) Mediation;
  - (l) Parent notice and disclosure;
  - (m) Transfer of parental rights;
  - (n) Discipline procedures;
  - (o) Procedures for evaluation and determination of eligibility; and
  - (p) Procedures for evaluating specific learning disabilities;
- (14) Procedures for private school placement;
- (15) Procedures for voluntary enrollment in nonpublic schools;
- (16) Staff development procedures;
- (17) Procedures for the employment of special education personnel who have the special education endorsement as required in § 24:02:03:21 or 24:02:03:21.01;
- ~~(12) Policy on the provision of facilities, materials, and equipment used for special education that are comparable to those used in regular education;~~
- (18) Policy on purchase of instructional materials;
- (19) Policy on prohibition on mandatory medication;
- (20) Policies on the use of Part B IDEA funds;
- (21) Policy on records regarding migratory children with disabilities;
- (22) Policy on transition from IDEA, Part C, infants to toddlers with disabilities, to preschool;
- (23) Policy on performance goals and indicators;
- (24) Procedures for participation in assessments; and
- (25) Public information.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:21:01.01. Exception for prior policies and procedures.** If a local education agency has on file with the department policies and procedures that demonstrate compliance with this article, including any policies and procedures filed under Part B of the Individuals with Disabilities Education Act as in effect before December 3, 2004 ~~June 4, 1997~~, the department shall consider the school district to have met the requirements for purposes of receiving assistance under Part B of the Individuals with Disabilities Education Act.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Draft**

**Law Implemented:** SDCL 13-37-1.1.

**24:05:21:01.02. Amendments to policies and procedures.** Policies and procedures submitted by a local education agency in accordance with this article remain in effect until it submits to the department modifications that the agency decides are necessary. The department may require a local education agency to modify its policies and procedures, but only to the extent necessary to ensure the district's compliance with Part B of the Individuals with Disabilities Education Act if:

- (1) After December 3, 2004, ~~June 4, 1997~~, the provisions of Part B of the Individuals with Disabilities Education Act or its implementing regulations are amended;
- (2) There is a new interpretation of Part B of the Individuals with Disabilities Education Act by federal or state courts; or
- (3) There is an official finding of noncompliance with federal or state law or regulations.

~~The provisions of this section apply to a modification to a local education agency policies and procedures in the same manner and to the same extent that they apply to the agency's original policies and procedures.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:21:02. Approval of special education program -- Content of review.** The ~~Office of~~ Special Education Programs shall approve special education programs that meet the standards of the South Dakota Board of Education. Each local education agency shall submit eligibility information each school year. The local education agency shall be notified of approval or disapproval by letter from the ~~Office of~~ Special Education Programs. The review shall include the following:

- (1) Recertification of current comprehensive plan;
- (2) Certified personnel; and
- (3) Number of certified children served.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:21:03. Comprehensive plans serve as district's eligibility for federal funds.** The information required in an agency's comprehensive plan coupled with statements of expenditures, descriptions of the annual use of IDEA, Part B funds, and certification of federal assurances establish a local education agency's eligibility for funds under the Individuals with Disabilities Education Act, Part B.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:21:04. Purchase of instructional materials.** A school district that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as the department under 24:05:14:17. Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

If a school district chooses not to coordinate with the NIMAC, the district shall provide an assurance to the department that the district will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

Nothing in this section relieves a district of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:21:05. Records regarding migratory children with disabilities.** A school district shall cooperate in the U.S. Secretary of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

**Source:**

**General Authority:**

**Law Implemented:**

## CHAPTER 24:05:22

### CHILD IDENTIFICATION

#### Section

- 24:05:22:01 District required to identify children in need of special education or special education and related services.
- 24:05:22:02 Minimum procedures.
- 24:05:22:03 Certified child.
- 24:05:22:04 Services for children less than three years of age.
- 24:05:22:04.01 Services to children age three to twenty-one, inclusive.
- 24:05:22:05 Services to children age twenty-one.

**24:05:22:01. District required to identify children in need of special education or special education and related services.** Each school district shall develop and utilize a system for the identification, location, and evaluation of children in need of special education or special education and related services. The system must include all children residing within the jurisdiction of the district who are ages birth through 21 regardless of the severity of their disability, including children in all public and private agencies and institutions, private schools, including religious schools, and children receiving alternative instruction under SDCL 13-27-3 within the legal boundaries of the district. The requirements of this section apply to:

- (1) Wards of the state, and highly mobile children with disabilities such as migrant, and homeless children; and
- (2) Children who are suspected of being children with disabilities under this article and in need of special education, even though they are advancing from grade to grade.

~~The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements in chapter 24:05:29.~~

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:22:02. Minimum procedures.** At a minimum, a local school district's procedures for implementing its child identification system must include the following:

- (1) The name and title of the individual responsible for the coordination, implementation, and documentation of the system;

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(2) A written description of the district's annual public awareness campaign for informing the parents of children residing within the legal boundaries of the district and other interested parties located within the jurisdiction of the district, including all public and private agencies and institutions, private schools, including religious schools, and children receiving alternative instruction under SDCL 13-27-3;

(3) The establishment of procedures for collecting, maintaining, and reporting current and accurate data on all child identification activities which must be ongoing and include children not currently enrolled in the public school education program. These procedures must be as follows:

- (a) In written form;
- (b) Contained in each district's special education comprehensive plan; and
- (c) Describe each child identification activity for which the district is responsible; and

(4) A practical method of determining which children are currently receiving needed special education or special education and related services.

Documentation supporting the implementation of a local school district's child identification system shall be maintained by the district for review by Office of Special Education staff during on-site monitoring visits and must include annual child count data submitted to the department for approval.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:22:03. Certified child.** A certified child is a child in need of special education or special education and related services who has received a multidisciplinary evaluation and has an individual education program formulated and approved by a local placement committee. Documentation supporting a child's disabling condition as defined by Part B of the Individuals with Disabilities Education Act must be maintained by the school district for verification of its annual federal child count. This definition applies to all eligible children ages 3 to 21, inclusive, and to only those children under the age of 3 who are in need of prolonged assistance.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:22:04. Services for children less than three years of age.** Each school district shall provide special education or special education and related services for children less than three years of age who are in need of prolonged assistance.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:04.01. Services to children age three to twenty-one, inclusive.** A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:22:05. Services to children age twenty-one.** A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Draft**

## CHAPTER 24:05:23

### REQUIREMENTS FOR CHILD EVALUATORS

#### Section

24:05:23:01	Educational evaluator.
24:05:23:02	Psychological evaluator.
24:05:23:03	Psychiatric evaluator.
24:05:23:04	Language, speech, or hearing evaluator.
24:05:23:05	Audiological evaluator.
24:05:23:06	Medical evaluator.
24:05:23:07	Occupational therapy evaluator.
24:05:23:08	Physical therapy evaluator.
24:05:23:09	Vision evaluator.

**24:05:23:01. Educational evaluator.** An educational evaluator must possess a valid teaching certificate and must have training in individual and group tests to be administered.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** School accreditation, art 24:03.

**24:05:23:02. Psychological evaluator.** A psychological evaluator must be a school psychologist certified by the department or a school psychological examiner certified by the department. A school psychological examiner's report must be co-signed by a certified school psychologist.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Psychologists, SDCL chapter 36-27A.

**24:05:23:03. Psychiatric evaluator.** A psychiatric evaluator must be a psychiatrist licensed by the State Board of Medical and Osteopathic Examiners.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**Draft**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Physicians and surgeons, SDCL chapter 36-4.

**24:05:23:04. Language, speech, or hearing evaluator.** A language, speech, or hearing evaluator must have a valid South Dakota certificate as a speech and hearing clinician.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Requirements for school speech and hearing clinician endorsement, § 24:02:03:22.

**24:05:23:05. Audiological evaluator.** An audiological evaluator must have a valid South Dakota certificate as a school audiologist.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Requirements for school audiologist endorsement, § 24:02:03:31.

**24:05:23:06. Medical evaluator.** A medical evaluator must be licensed to practice medicine or osteopathy by the State Board of Medical and Osteopathic Examiners.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Physicians and surgeons, SDCL chapter 36-4.

**24:05:23:07. Occupational therapy evaluator.** An occupational therapy evaluator must be licensed as an occupational therapist by the State Board of Medical and Osteopathic Examiners.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**Cross-Reference:** Occupational therapists, SDCL chapter 36-31.

**24:05:23:08. Physical therapy evaluator.** A physical therapy evaluator must be licensed as a physical therapist by the State Board of Medical and Osteopathic Examiners.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Physical therapists, SDCL chapter 36-10.

**24:05:23:09. Vision evaluator.** A vision evaluator must be an ophthalmologist licensed by the State Board of Medical and Osteopathic Examiners or an optometrist licensed by the State Board of Optometry.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-References:** Physicians and surgeons, SDCL chapter 36-4; Optometrists, SDCL chapter 36-7.

## CHAPTER 24:05:24

### REFERRAL PROCEDURES

#### Section

~~24:05:24:01 Referral.~~

~~24:05:24:02 Duties of a district after referral.~~

~~24:05:24:03 Duties of a district after informal review.~~

~~24:05:24:04 Documentation of referrals not evaluated.~~

~~24:05:24:01. Referral.~~ Referral includes any written request which brings a student to the attention of a school district administrator (building principal, superintendent, or special education director) as a student who may be in need of special education. A referral made by a parent may be submitted verbally, but it must be documented by a district administrator. Other sources of referrals include the following:

- ~~(1) Referral through screening;~~
- ~~(2) Referral by classroom teacher;~~
- ~~(3) Referral by other district personnel;~~
- ~~(4) Referral by other public or private agencies; and~~
- ~~(5) Referral by private schools, including religious schools.~~

~~Source:~~ 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

~~General Authority:~~ SDCL 13-37-1.1.

~~Law Implemented:~~ SDCL 13-37-1.1.

~~24:05:24:02. Duties of a district after referral.~~ Upon receiving a referral the school district shall conduct an informal review or may proceed with the evaluation process. An informal review includes a conference, if appropriate and necessary, either in person or by telephone, with the person making the referral and a review of the student's school record.

~~Source:~~ 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

~~General Authority:~~ SDCL 13-37-1.1.

~~Law Implemented:~~ SDCL 13-37-1.1.

~~24:05:24:03. Duties of a district after informal review.~~ If, after an informal review arising from a parental referral, the district determines that no evaluation is necessary, the district shall inform the parents of its decision and the reasons for the decision. It shall also inform the parents of their due process rights.

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—— ~~If after informal review, the district determines that further evaluation is necessary, the district shall conduct a multidisciplinary evaluation with the consent of the parents.~~

—— ~~**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.~~

—— ~~**General Authority:** SDCL 13-37-1.1.~~

—— ~~**Law Implemented:** SDCL 13-37-1.1.~~

—— ~~**Cross-Reference:** Procedural safeguards, ch 24:05:30.~~

—— ~~**24:05:24:04. Documentation of referrals not evaluated.** All referrals of students that do not result in evaluation must be documented by the district.~~

—— ~~**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

—— ~~**General Authority:** SDCL 13-37-1.1.~~

—— ~~**Law Implemented:** SDCL 13-37-1.1.~~

## CHAPTER 24:05:24.01

### ELIGIBILITY CRITERIA

#### Section

- 24:05:24.01:01 Students with disabilities defined.
- 24:05:24.01:02 Screening procedures for autism.
- 24:05:24.01:03 Autism defined.
- 24:05:24.01:04 Diagnostic criteria for autism.
- 24:05:24.01:05 Diagnostic procedures for autism.
- 24:05:24.01:06 Instruments used in diagnosis of autism.
- 24:05:24.01:07 Deaf-blindness defined.
- 24:05:24.01:08 Deafness defined.
- 24:05:24.01:09 Developmental delay defined.
- 24:05:24.01:10 Hearing loss ~~impairment~~ defined.
- 24:05:24.01:11 Cognitive disability. ~~Mental retardation defined.~~
- 24:05:24.01:12 Multiple disabilities defined.
- 24:05:24.01:13 Orthopedic impairment defined.
- 24:05:24.01:14 Other health impaired defined.
- 24:05:24.01:15 Prolonged assistance defined.
- 24:05:24.01:16 Emotional disturbance defined.
- 24:05:24.01:17 Criteria for emotional disturbance.
- 24:05:24.01:18 Specific learning disability defined.
- 24:05:24.01:19 Criteria for specific learning disability.
- 24:05:24.01:20 Speech or language disorder defined.
- 24:05:24.01:21 Articulation disorder defined.
- 24:05:24.01:22 Criteria for articulation disorder.
- 24:05:24.01:23 Fluency disorder defined.
- 24:05:24.01:24 Criteria for fluency disorder.
- 24:05:24.01:25 Voice disorder defined.
- 24:05:24.01:26 Criteria for voice disorder.
- 24:05:24.01:27 Language disorder defined.
- 24:05:24.01:28 Criteria for language disorder.
- 24:05:24.01:29 Traumatic brain injury defined.
- 24:05:24.01:30 Vision loss ~~Visual impairment~~ including blindness defined.
- 24:05:24.01:31 IEP team override.

**24:05:24.01:01. Students with disabilities defined.** Students with disabilities are students evaluated in accordance with chapter 24:05:25 as having autism, deaf-blindness, deafness, hearing loss ~~impairment~~, cognitive disability, ~~mental retardation~~, multiple disabilities, orthopedic impairment, other health impairments, emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, or vision loss, ~~visual impairments~~ including blindness, which adversely affects educational performance, and who, because of those disabilities, need special education or special

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education and related services. If it is determined through an appropriate evaluation, under chapter 24:05:25, that a student has one of the disabilities identified in this chapter, but only needs a related service and not special education, the student is not a student with a disability under this article. If, consistent with this chapter, the related service required by the student is considered special education, the student is a student with a disability under this article.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:02. Screening procedures for autism.** If a student is suspected of having autism, screening procedures for autism shall include a review of any medical, hearing, and vision data on the student; the history of the student's behavior; and the student's current patterns of behavior related to autism.

**Source:** 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:27, 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-28.

**Law Implemented:** SDCL 13-37-1.1, 13-37-28.

**24:05:24.01:03. Autism defined.** Autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction and results in adverse effects on the child's educational performance.

Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if the student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined under Part B of Individuals with Disabilities Education Act.

**Source:** 20 SDR 33, effective September 8, 1993; transferred from § 24:05:25:27.01, 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1, 13-37-28.

**Law Implemented:** SDCL 13-37-1.1, 13-37-28.

**24:05:24.01:04. Diagnostic criteria for autism.** An autistic disorder is present in a student if at least six of the following twelve characteristics are expressed by a student with at least two of the characteristics from subdivision (1), one characteristic from subdivision (2), and one characteristic from subdivision (3):

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(1) Qualitative impairment in social interaction, as manifested by at least two of the following:

- (a) Marked impairment in the use of multiple nonverbal behaviors, such as eye-to-eye gaze, facial expression, body postures, and gestures, to regulate social interaction;
- (b) Failure to develop peer relationships appropriate to developmental level;
- (c) A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people, such as a lack of showing, bringing, or pointing out objects of interest;
- (d) Lack of social or emotional reciprocity;

(2) Qualitative impairment in communication as manifested by at least one of the following:

- (a) Delay in, or total lack of, the development of spoken language not accommodated by an attempt to compensate through alternative modes of communication, such as gesture or mime;
- (b) In an individual with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;
- (c) Stereotyped and repetitive use of language or idiosyncratic language;
- (d) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(3) Restricted repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least one of the following:

- (a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;
- (b) Apparently inflexible adherence to specific, nonfunctional routines or rituals;
- (c) Stereotyped and repetitive motor mannerisms, such as hand or finger flapping or twisting, or complex whole-body movements;
- (d) Persistent preoccupation with parts of objects.

A student with autism also exhibits delays or abnormal functioning in at least one of the following areas, with onset generally prior to age three: social interaction, language used as a social communication, or symbolic or imaginative play. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this section are satisfied.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1, 13-37-28.

**Law Implemented:** SDCL 13-37-1.1, 13-37-28.

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**24:05:24.01:05. Diagnostic procedures for autism.** School districts shall refer students suspected as having autism for a diagnostic evaluation to an agency specializing in the diagnostic and educational evaluation of autism or to another multidisciplinary team or group of persons who are trained and experienced in the diagnosis and educational evaluation of persons with autism.

A student suspected of autism must be evaluated in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The evaluation shall utilize multiple sources of data, including information from parents and other caretakers, direct observation, performance on standardized tests of language/communication and cognitive functioning and other tests of skills and performance, including specialized instruments specifically developed for the evaluation of students with autism.

**Source:** 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:29, 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-28.

**Law Implemented:** SDCL 13-37-1.1, 13-37-28.

**24:05:24.01:06. Instruments used in diagnosis of autism.** Instruments used in the diagnosis of students suspected of having autism include those which are based on structured interviews with parents and other caregivers, behavior rating scales, and other objective behavior assessment systems.

Instruments used in the diagnosis of students with autism must be administered by trained personnel in conformance with the instructions provided by their producer.

No single instrument or test may be used in determining diagnosis or educational need. Specific consideration must be given to the following issues in choosing instruments or methods to use in evaluating students who are suspected of having autism:

- (1) The student's developmental level and possible deviations from normal development across developmental domains;
- (2) The student's primary mode of communication;
- (3) The extent to which instruments and methods identify strengths as well as deficits; and
- (4) The extent that instruments and methods are tailored to assess skills in relationship to everyday activities and settings.

**Source:** 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:30, 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-28.

**Law Implemented:** SDCL 13-37-1.1, 13-37-28.

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**24:05:24.01:07. Deaf-blindness defined.** Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

~~Deaf blindness means that hearing and visual impairments affect a student at the same time. Students may be identified as deaf blind when both vision and hearing impairments exist which are so severe that their sensory acuity cannot be determined and adaptations in both auditory and visual modes are required, or there is no response to auditory and visual stimuli.~~

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:08. Deafness defined.** Deafness is a hearing loss impairment that is so severe that the student is impaired in processing linguistic information through hearing, even with amplification, that adversely affects a student's educational performance.

A student may be identified as deaf when the unaided hearing loss is in excess of 70 decibels and precludes understanding of speech through the auditory mechanism, even with amplification, and demonstrates an inability to process linguistic information through hearing, even with amplification.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:09. Developmental delay defined.** A student three four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01 or if the student experiences a severe delay in development and need special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or ~~and~~ emotional development, and adaptive development functioning skills.

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The student may not be identified as a student with a disability if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the department's definition of the term and to the age range that has been adopted by the department.

A district shall ensure that all of the student's special education and related services needs that have been identified through the evaluation procedures described under chapter 24:05:25 are appropriately addressed.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:10. Hearing loss impairment defined.** A student may be identified as having a hearing loss ~~impaired~~ if an unaided hearing loss of 35 to 69 decibels is present that makes the acquisition of receptive and expressive language skills difficult with or without the help of amplification.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:11. Cognitive disability. Mental retardation defined.** Cognitive disability ~~Mental retardation~~ is significantly below-average general intellectual functioning existing concurrently with deficits in adaptive behavior skills and is generally manifested before age eighteen that adversely affects a student's educational performance. The required evaluative components for identifying a student with a cognitive disability ~~mental retardation~~ are as follows:

(1) General intellectual functioning two standard deviations or more below the mean as determined by the full scale score on an individual cognitive evaluation, plus or minus standard error of measurement, as determined in accordance with § 24:05:25:04; and

(2) Exhibits deficits in adaptive behavior and academic or preacademic skills as determined by an individual evaluation in accordance with § 24:05:25:04.

**Source:** 23 SDR 31, effective September 8, 1996; 23 SDR 139, effective March 10, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:24.01:12. Multiple disabilities defined.** Multiple disabilities means concomitant impairments (such as a cognitive disability-blindness or a cognitive disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness. ~~Multiple disabilities means that two or more of the following disabilities affect the student at the same time: deafness, mental retardation, orthopedic impairment, other health impairment, serious emotional disturbance, speech or language impairment, traumatic brain injury, and visual impairment including blindness. The term does not include deaf blindness.~~

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:13. Orthopedic impairment defined.** Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

~~Orthopedic impairment is an impairment caused by a congenital anomaly, such as a club foot or absence of some member; a disease, such as poliomyelitis or bone tuberculosis; or another cause, such as cerebral palsy, an amputation, or a fracture or burn that causes contractures.~~

There must be evidence of the following:

- (1) That the student's impaired motor functioning significantly interferes with educational performance;
- (2) That the student exhibits deficits in muscular or neuromuscular functioning that significantly limit the student's ability to move about, sit, or manipulate materials required for learning;
- (3) That the student's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills; and
- (4) That current medical data by a qualified medical evaluator describes and confirms an orthopedic impairment.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:24.01:14. Other health impaired defined.** Other health impaired means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, because of a chronic or acute health problem, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, Tourette syndrome or diabetes, that adversely affects a student's educational performance.

Adverse effects in educational performance must be verified through the multidisciplinary evaluation process as defined in subdivision 24:05:13:01(18).

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:15. Prolonged assistance defined.** Children from birth through two may be identified as being in need of prolonged assistance if, through a multidisciplinary evaluation, they score two standard deviations or more below the mean in two or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:16. Emotional disturbance defined.** Emotional disturbance is a condition that exhibits one or more of the following characteristics to a marked degree over a long period of time:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) Inappropriate types of behavior or feelings under normal circumstances;
- (4) A general pervasive mood of unhappiness or depression; or
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

~~An emotional disturbance is not a transient expected response to stressors in the individual's environment; or misbehavior that can generally be corrected by environmental intervention. Environmental intervention includes feedback to the individual, advice to parents, and modifications and strategies addressed through teacher assistance team programs, or similar programs.~~

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The term, emotional disturbance, includes schizophrenia. The term does not apply to a student who is socially maladjusted unless a multidisciplinary evaluation team determines pursuant to § 24:05:24.01:17 that the student has an emotional disturbance.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:17. Criteria for emotional disturbance.** A student may be identified as emotionally disturbed if the following requirements are met:

(1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from the school and one or more other sources of the frequency and severity of the targeted behaviors;

(2) The students performance falls two standard deviations or more below the mean in emotional functions, as measured in school, home, and community on nationally normed technically adequate measures; and

(3) An adverse effect on educational performance is verified through the multidisciplinary evaluation process as defined in subdivision 24:05:13:01(18).

A student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:18. Specific learning disability defined.** Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in the an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The terms do not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive disability ~~mental retardation~~; emotional disturbance; or environmental, cultural, or economic disadvantage.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:24.01:19. Criteria for specific learning disability.** A group of qualified professionals and the parent of the child may determine that a child has a specific learning disability, if:

(1) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading fluency skills.
- (f) Reading comprehension.
- (g) Mathematics calculation.
- (h) Mathematics problem solving.

(2) (a) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or

(b) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with this article; and

(3) The group determines that its findings under this section are not primarily the result of:

- (a) A visual, hearing, or motor disability;
- (b) A cognitive disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in this article:

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The school district must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the

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timeframes described in this article unless extended by mutual written agreement of the child's parents and a group of qualified professionals:

- (1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section; and
- (2) Whenever a child is referred for an evaluation.

~~A student may be identified as having a specific learning disability under the following circumstances:~~

~~—— (1) The student does not achieve commensurate with the student's age and ability levels in one or more of the areas listed in subdivision (2) of this section when provided with learning experiences appropriate for the student's age and ability levels; and~~

~~—— (2) The team finds that a student has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the following areas:~~

- ~~—— (a) Oral expression;~~
- ~~—— (b) Listening comprehension;~~
- ~~—— (c) Written expression;~~
- ~~—— (d) Basic reading skill;~~
- ~~—— (e) Reading comprehension;~~
- ~~—— (f) Mathematical calculation; or~~
- ~~—— (g) Mathematical reasoning.~~

~~—— The team must consider regression to the mean in determining this discrepancy.~~

~~—— When using a measure of intellectual functioning which has verbal and performance subscales, the total score must be used unless there is a difference of more than one standard deviation between the two scores. If there is a difference of more than one standard deviation between the two subscales, the higher scale must be used.~~

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:20. Speech or language disorder defined.** Speech or language impairment is a communication disorder such as stuttering, impaired articulation, a language disorder, or a voice disorder that adversely affects a child's educational performance.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:24.01:21. Articulation disorder defined.** Articulation disorders include all non-maturational speech deviations based primarily on incorrect production of speech sounds. Articulation disorders include omissions, substitutions, additions, or distortions of phonemes within words. Articulation patterns that can be attributed to cultural or ethnic background are not disabilities.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:22. Criteria for articulation disorder.** A student may be identified as having an articulation disorder if one of the following criteria exist:

(1) Performance on a standardized articulation test falls two standard deviations below the mean and intelligibility is affected in conversation;

(2) Test performance is less than two standard deviations below the mean but the student is judged unintelligible by the speech and language clinician and one other adult;

(3) Performance on a phonological assessment falls in the profound or severe range and intelligibility is affected in conversation;

(4) Performance on a phonological assessment falls in the moderate range, intelligibility is affected in conversation, and during a tracking period of between three and six months there was a lack of improvement in the number and type of errors; or

(5) An error persists six months to one year beyond the chronological age when 90 percent of students have typically acquired the sound based on developmental articulation norms.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:23. Fluency disorder defined.** A fluency disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm, and repetitions in sounds, syllables, words, and phrases. This may be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:24. Criteria for fluency disorder.** A student may be identified as having a fluency disorder if:

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(1) The student consistently exhibits one or more of the following symptomatic behaviors of dysfluency:

- (a) Sound, ~~symbolic~~, syllable, or word repetition;
- (b) Prolongations of sounds, syllables, or words;
- (c) Blockages; or
- (d) Hesitations.

(2) There is a significant discrepancy from the norm as measured by speech sampling in a variety of contexts. A significant discrepancy from the norm is five dysfluencies a minute; or

(3) The disruption occurs to the degree that the individual or persons who listen to the individual react to the manner of speech and the disruptions in a way that impedes communication.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:25. Voice disorder defined.** A voice disorder is characterized by the abnormal production or absence of vocal quality, pitch, loudness, resonance, duration which is inappropriate for an individual's age or gender, or both.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:26. Criteria for voice disorder.** A student may be identified as having a voice disorder if:

- (1) Consistent deviations exist in one or more of the parameters of voice: pitch, quality, or volume;
- (2) The voice is discrepant from the norm for age, gender, or culture and is distracting to the listener; and
- (3) The disorder is not the result of a temporary problem, such as normal voice changes, allergies, colds, or similar conditions.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:27. Language disorder defined.** A language disorder is a reduced ability, whether developmental or acquired, to comprehend or express ideas through spoken, written, or gestural language. The language disorder may be characterized by limited vocabulary, an inability to function through the use of words (pragmatics) and

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their meanings (semantics), faulty grammatical patterns (syntax and morphology), or the faulty reproduction of speech sounds (phonology). A language disorder may have a direct or indirect affect on a student's cognitive, social, emotional, or educational development or performance and deviates from accepted norms. The term language disorder does not include students whose communication problems result solely from a native language other than English or from their dialectal differences.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:28. Criteria for language disorder.** A student may be identified as having a language disorder as a primary disability if:

(1) Through age eight, performance falls 1.5 standard deviations below the mean on standardized evaluation instruments; beginning at age nine, a difference is present of 1.5 standard deviations between performance on an individually administered standardized language assessment instrument and measured expected potential as measured by an individually administered intelligence test; and

(2) The student's pragmatic skills, as measured by checklists, language samples, or observation, adversely affect the student's academic and social interactions.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:29. Traumatic brain injury defined.** A traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Adverse effects in educational performance must be verified through the multidisciplinary evaluation process as defined in subdivision 24:05:13:01(12).

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:30. Vision loss ~~Visual impairment~~ including blindness defined.** Vision loss ~~Visual impairment~~ including blindness is an impairment in vision that, even

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with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

A student with a vision loss ~~visual impairment~~ has a deficiency in visual acuity that, even with the use of lenses or corrective devices, requires special education or special education and related services.

Partial sight is one or more deficiencies in visual acuity, as follows:

- (1) Visual acuity of no better than 20/70 in the better eye after correction;
- (2) Restricted visual field;
- (3) Limited ability to move about safely in the environment because of visual disability;

Blindness is a deficiency in visual acuity of 20/200 or less in the better eye with correcting lenses or a limited field of vision in which the widest diameter subtends an angular distance of no greater than twenty degrees or has a medically indicated expectation of visual deterioration.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:24.01:31. IEP team override.** If the IEP team determines that a student is eligible for special education or special education and related services because the student has a disability and needs special education even though the student does not meet specific requirements in this chapter, the IEP team must include documentation in the record as follows:

- (1) The record must contain documents that explain why the standards and procedures that are used with the majority of students resulted in invalid findings for this student;
- (2) The record must indicate what objective data were used to conclude that the student has a disability and is in need of special education. These data may include test scores, work products, self-reports, teacher comments, previous tests, observational data, and other developmental data;
- (3) Since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision; and
- (4) The IEP team override decision must include a sign-off by the IEP team members agreeing to the override decision. If one or more IEP team members disagree with the override decision, the record must include a statement of why they disagree signed by those members.

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The district director of special education shall keep a list of students on whom the IEP team override criteria were used to assist the state in evaluating the adequacy of student identification criteria.

**Source:** 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

CHAPTER 24:05:25

EVALUATION, CONSENT, AND PLACEMENT PROCEDURES

Section	
24:05:25:01	Evaluation, <u>consent</u> , eligibility, and placement procedures required.
24:05:25:02	Nondiscriminatory practices.
<u>24:05:25:02.01</u>	<u>Parental consent for initial evaluation.</u>
<u>24:05:25:02.02</u>	<u>Consent for ward of the state.</u>
<u>24:05:25:02.03</u>	<u>Use of procedural safeguards to obtain parental consent.</u>
<u>24:05:25:02.04</u>	<u>Other consent requirements.</u>
24:05:25:03	Preplacement evaluation.
<u>24: 05:25:03.01</u>	<u>Exception to initial evaluation timeline.</u>
<u>24:05:25:03.02</u>	Evaluation defined.
<u>24:05:25:03.03</u>	<u>Screening for instructional purposes.</u>
<u>24:05:25:03.04</u>	<u>Evaluation procedures - - Notice.</u>
24:05:25:04	Evaluation procedures - - <u>General.</u>
24:05:25:04.01	Braille assessment factors.
24:05:25:04.02	Determination of needed evaluation data.
24:05:25:04.03	Determination of eligibility.
24:05:25:05	Eligibility and placement procedures.
24:05:25:06	Reevaluations.
24:05:25:06.01	Consent for reevaluation.
24:05:25:07	Additional procedures for evaluating specific learning disabilities.
24:05:25:08	Additional <del>team</del> <u>group</u> members for specific learning disabilities.
24:05:25:09	Repealed.
24:05:25:10	<del>Prohibitions concerning identification of specific learning disabilities.</del> <u>Repealed.</u>
24:05:25:11	Observation for specific learning disabilities.
24:05:25:12	<del>Written report</del> <u>Documentation of</u> eligibility for specific learning disabilities.
24:05:25:13	<del>Team</del> <u>Group</u> members to certify report in writing.
<u>24:05:25:13.01.</u>	<u>Response to intervention model.</u>
24:05:25:14 and 24:05:25:15	Repealed.
24:05:25:16	Parent participation.
24:05:25:16.01	Participation of student in IEP team meeting.
24:05:25:16.02	Required student invitation.
24:05:25:17	Conduct of IEP team without parents.
24:05:25:18	Action to ensure parent understands.

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24:05:25:19	Parents to receive copy of individual education program.
24:05:25:20	IEP team to evaluate, interpret, and explain.
24:05:25:21	IEP team to determine placement.
24:05:25:22	IEP team to develop individual education program.
24:05:25:23	Decisions of IEP team.
24:05:25:24	<del>Short-term evaluation programs.</del> <u>Repealed.</u>
24:05:25:25	<del>Duration of short-term evaluation.</del> <u>Repealed.</u>
24:05:25:26	Extended school year authorized.
24:05:25:27 and 24:05:25:27.01	Transferred.
24:05:25:28	Repealed.
24:05:25:29 and 24:05:25:30	Transferred.

**24:05:25:01. Evaluation, consent, eligibility, and placement procedures required.** Each school district shall establish and implement procedures which meet the requirements of this chapter, including nondiscriminatory practices, parental consent, initial evaluation, evaluation procedures, eligibility procedures, placement procedures, and reevaluation.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:02. Nondiscriminatory practices.** ~~Testing~~ Assessments and other evaluation materials used for the purpose of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:02.01 Parental consent for initial evaluation.** The school district proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability shall, after providing notice consistent with chapter 24:05:30, obtain informed consent from the parent of the child before conducting the evaluation.

Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

The school district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

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To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using the procedures in 24:05:25:17.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:02.02 Consent for ward of the state.** For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(a) Despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent of the child;

(b) The rights of the parents of the child have been terminated in accordance with state law; or

(c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using the procedures in 24:05:25:17.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:02.03 Use of procedural safeguards to obtain parental consent.** If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under this section, or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this article, including the mediation procedures or the due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent.

The school district does not violate its obligation under child find in this article and the requirements in this chapter regarding parental consent, evaluation and reevaluation if the district declines to pursue the evaluation.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:02.04 Other consent requirements.** Other consent requirements include the following:

(1) Parental consent is not required before:

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(a) Reviewing existing data as part of an evaluation or a reevaluation; or  
(b) Administering a test or other evaluation that is administered to all children  
unless, before administration of that test or evaluation, consent is required of parents of  
all children.

(2) A school district may not use a parent's refusal to consent to one service or  
activity under this section to deny the parent or child any other service, benefit, or  
activity of the school district, except as required by this article.

(3) If a parent of a child who is receiving alternative instruction under SDCL 13-  
27-3 or placed in a private school by the parents at their own expense does not provide  
consent for the initial evaluation or the reevaluation, or the parent fails to respond to a  
request to provide consent, the school district may not use the consent override  
procedures in chapter 24:05:30 including mediation and due process hearing procedures.  
The school district is not required to consider the child as eligible for services under  
chapter 24:05:32.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:03. Preplacement evaluation.** Before any action is taken concerning the initial placement of a child with disabilities in a special education program, a full and individual initial evaluation of the child's educational needs must be conducted in accordance with the requirements of this chapter. Initial evaluations must be completed within 25 school days after receipt by the district of signed parent consent to evaluate unless other timelines are agreed to by the school administration and the parents. ~~Consent for initial evaluation may not be construed as consent for initial placement.~~

Consistent with the consent requirements in this section, either a parent of a child  
or a school district may initiate a request for an initial evaluation to determine if the child  
is a child with a disability.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Procedural safeguards, ch 24:05:30.

**24:05:25:03.01 Exception to initial evaluation timeline.** The timeline  
described in 24:05:25:03 does not apply to a school district if:

(1) The parent of a child repeatedly fails or refuses to produce the child for the  
evaluation; or

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(2) A child enrolls in a school of another school district after the relevant timeline in this section has begun, and prior to a determination by the child's previous school district as to whether the child is a child with a disability.

The exception in this section applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:03.02 Evaluation defined.** Evaluation means the procedures used in accordance with this chapter to determine if a child is disabled and to determine the nature and extent of the special education and related services that the child needs.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:03.03 Screening for instructional purposes.** The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:03.04 Evaluation procedures - - Notice.** The school district shall provide notice to the parents of a child with a disability, in accordance with this article, that describes any evaluation procedures the district proposes to conduct.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:04. Evaluation procedures - - General.** School districts shall ensure, at a minimum, that evaluation procedures include the following:

(1) Assessments Tests and other evaluation materials are provided and administered in the child's native language or by another mode of communication and in the form most likely to yield accurate information on what the child knows and can do

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academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. ~~that the child understands, unless it is clearly not feasible to do so.~~  
~~Any standardized tests that are given to a child:~~

In addition, assessments and other evaluation materials:

(a) Are used for the purposes for which the assessments or measures are valid and reliable; Have been validated for the specific purpose for which they are used; and

(b) Are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;

(2) Assessments ~~Tests~~ and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(3) Assessments ~~Tests~~ are selected and administered so as best to ensure that ~~a test~~ if an assessment is administered to a child with impaired sensory, manual, or speaking skills accurately reflects the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the test purports to measure;

(4) No single measure or assessment ~~procedure~~ is used as the sole criterion for determining eligibility or an appropriate educational program for a child;

(5) A variety of assessment tools and strategies are used to gather relevant functional, ~~and~~ developmental and academic information about the child, including information provided by the parents, that may assist in determining:

(a) Whether the child is a child with a disability; and

(b) The content of the child's IEP, including information related to enabling the child:

(i) To be involved in and progress in the general education curriculum; or

(ii) For a preschool child, to participate in appropriate activities;

(6) Technically sound instruments, assessment tools, and strategies are used that:

(a) May assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and

(b) Provide relevant information that directly assists persons in determining the educational needs of the child;

(7) The child is assessed in all areas related to the suspected disability, including, if appropriate ~~as applicable~~, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and

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(8) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

~~(9) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills; and~~

~~—— (10) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.~~

Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 24:05:25:03.01, to ensure prompt completion of full evaluations.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-30.

**24:05:25:04.01. Braille assessment factors.** The following age-appropriate factors must be considered when conducting a reading and writing assessment of the student to determine whether or not Braille instruction must begin or continue:

- (1) Reading readiness;
- (2) Functional reading skills including reading level, print size, reading rate, comprehension, and stamina;
- (3) Functional writing skills;
- (4) Prognosis of eye condition for change in visual status;
- (5) Functional communication skills and primary language of communication;
- (6) Functional visual abilities; and
- (7) Tactile discrimination.

**Source:** 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-31.

**Law Implemented:** SDCL 13-37-30.

**24:05:25:04.02. Determination of needed evaluation data.** As part of an initial evaluation, if appropriate, and as part of any reevaluation, the individual education program team required by § 24:05:27:01.01 and other qualified professionals as appropriate ~~individuals with knowledge and skills necessary to interpret evaluation data,~~

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determine whether the child has a disability, and determine whether the child needs special education and related services, as appropriate, shall:

(1) Review existing evaluation data on the child, including:

- (a) Evaluations and information provided by the parents of the child;
- (b) Current classroom-based local or state assessments and observations; and
- (c) Observations by teachers and related services providers; and

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

- (a) Whether the student has a particular category of disability as described in this article;
- (b) The present levels of performance and educational needs of the student; and
- (c) Whether the student needs special education and related services.

The school district shall administer assessments ~~tests~~ and any other evaluation materials as may be needed to produce the data required to make the determinations listed in subdivision (2) of this section. If no additional data are needed to make the determinations listed in subdivision (2) of this section, the school district shall notify the student's parents of this fact and the reasons for this decision. The group described in this section may conduct its review without a meeting.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:04.03. Determination of eligibility.** Upon completing the administration of assessments ~~tests~~ and other evaluation measures ~~materials~~ as required by this chapter, the individual education program team and other qualified individuals required by § 24:05:25:04.02 shall determine whether the student is a student with a disability, and the educational needs of the child, as defined in this article. The school district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. A student may not be determined to be a student with a disability if the determinant factor for that decision is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in ESEA, or lack of appropriate instruction in math or limited English proficiency and if the student does not otherwise meet the eligibility criteria under chapter § 24:05:24.01.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:05. Eligibility and placement procedures.** In interpreting evaluation data for the purpose of determining eligibility and determining the educational needs of

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the child, and in making placement decisions, including decisions regarding preschool children, each school district shall do the following:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(4) Ensure that the placement decision is made in conformity with the least restrictive environment rules in chapter 24:05:28; and

(5) Ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

If a determination is made that a child is disabled and needs special education and related services, an individual education program must be developed for the child in accordance with this article.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:06. Reevaluations.** A school district shall ensure that a reevaluation of each child with a disability is conducted in accordance with this chapter:

(1) If the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

A reevaluation conducted under this section may occur not more than once a year, unless the parent and the school district agree otherwise; and must occur at least once every 3 years, unless the parent and the school district agree that a reevaluation is unnecessary.

Reevaluations must be completed within 25 school days after receipt by the district of signed consent to reevaluate unless other time limits are agreed to by the school administration and the parents.

Each school district shall follow the procedures under § 24:05:25:04.02 when reevaluating a student for the additional purposes of:

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(1) Determining whether the child continues to have a disability and the educational needs of the child;

(2) Determining the present levels of academic achievement and related developmental needs of the child;

(3) Determining whether the child continues to need special education and related services; and

(4) Determining whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine continuing eligibility, and the child's educational needs, the district shall notify the parents of that determination and reasons for it and of the right of the parent to request an assessment, for purposes of determining the child's educational needs ~~services~~ under this article and to determine continuing eligibility. The school district is not required to conduct an assessment unless requested to do so by the child's parents. However, a school district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability. The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under this article due to graduation from secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:06.01. Consent for reevaluation.** Before conducting a reevaluation of an eligible child, parental consent is required, unless:

(1) The school district can demonstrate that it has taken reasonable measures to obtain consent, and the child's parent has failed to respond; and

(2) The school district documents its efforts to obtain consent by using the procedures consistent with § 24:05:25:17.

If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures described in chapter 24:05:30 including mediation and due process hearing procedures.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:07. Additional procedures for evaluating specific learning disabilities.** In order for a school district to certify a child as learning disabled for

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purposes of the federal child count, requirements in §§ 24:05:24.01:19 and 24:05:25:08 to 24:05:25:13, inclusive, must be met and documented in a child's record.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Child count, ch 24:05:17.

**24:05:25:08. Additional ~~team~~ group members for specific learning disabilities.** Each district shall include the following on the multidisciplinary evaluation team:

The determination of whether a child suspected of having a specific learning disability is a child with a disability shall be made by the child's parents and a team of qualified professionals, which shall include:

- ~~(1) The child's parents;~~
- (1) The child's regular teacher;
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;
- (3) If the child is less than school age, an individual certified by the department to teach a child of that age; and
- (4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, remedial reading teacher, or special education teacher.

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-1-12.1, 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:09. Criteria for determining the existence of a specific learning disability.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**~~24:05:25:10. Prohibitions concerning identification of specific learning disabilities.~~** The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of a visual, hearing, or motor disability; mental retardation; emotional disturbance; or environmental, cultural, or economic disadvantage.

~~Source:~~ 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

~~General Authority:~~ SDCL 13-37-1.1.

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—— **Law Implemented:** SDCL 13-37-1.1.

**24:05:25:11. Observation for specific learning disabilities.** ~~At least one team member other than the child's regular teacher must observe the child's academic performance in the regular classroom setting.~~

The school district shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

The group described in this section, in determining whether a child has a specific learning disability, shall decide to:

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, as in an response to intervention model; or

(2) Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with this chapter, is obtained, as in a discrepancy model.

If a child is less than school age or out of school, a ~~team~~-group member must observe the child in an environment appropriate for a child of that age.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:12. Written report Documentation of eligibility for specific learning disabilities.** ~~The team shall prepare a written report of the results of the evaluation for specific learning disabilities. The report must include a statement of the following:~~

- ~~(1) Whether the child has a specific learning disability;~~
- ~~(2) The basis for making the determination;~~
- ~~(3) The relevant behavior noted during the observation of the child;~~
- ~~(4) The relationship of that behavior to the child's academic functioning;~~
- ~~(5) The educationally relevant medical findings, if any;~~
- ~~(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and~~
- ~~(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.~~

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement of:

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with this section;

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- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether:
  - (a) The child does not achieve adequately for the child's age or to meet state-approved grade-level standards; and
  - (b)(i) The child does not make sufficient progress to meet age or state-approved grade-level standards; or
  - (ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards or intellectual development;
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - (a) The instructional strategies used and the student-centered data collected; and
  - (b) The documentation that the child's parents were notified about:
    - (i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - (ii) Strategies for increasing the child's rate of learning; and
    - (iii) The parents' right to request an evaluation;
- (8) If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and
- (9) If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:13. ~~Team~~—Group members to certify report in writing.** Each group ~~team~~ member shall certify in writing whether the report reflects the group ~~team~~ member's conclusion. If it does not reflect the group ~~team~~ member's conclusion, the group ~~team~~ member must submit the conclusion in a separate statement.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:25:13.01. Response to intervention model.** School districts that elect to use a response to intervention model as part of the evaluation process for specific learning disabilities shall submit to the state for approval a formal proposal that at a minimum addresses the provisions in 24:05:25:12.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:25:14. Selection of placement committee members -- Required members.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:25:15. First-time evaluations.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:25:16. Parent participation.** Each district shall take steps to ensure that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place. The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child including information related to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the IDEA.

<sup>2</sup> If a purpose of the IEP team meeting is the consideration of postsecondary goals and ~~transition services needs~~ or transition services for a student, the notice must also address the provisions of § 24:05:25:16.01.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls consistent with 24:05:27:08.04.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Transition services, § 24:05:27:13.02.

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**24:05:25:16.01. Participation of student in IEP team meeting.** If a purpose of the IEP team meeting is the consideration of postsecondary goals and transition services needs or transition services for a student, the following provisions apply.

~~(1) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also:~~

~~—— (a) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and~~

~~—— (b) Indicate that the agency will invite the student; and~~

~~(2) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must:~~

For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice also shall:

(1) Indicate that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the student;

(2) Indicate that the district ~~agency~~ will invite the student; and

(3) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services ~~and who~~ will be invited to send a representative.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:16.02. Required student invitation.** The district shall invite ~~each student of any age to participate~~ a student with a disability to attend in an the student's IEP team meeting if a purpose of the meeting is the consideration of the postsecondary goals for the student and the transition services needs or consideration of needed transition services for the student or both needed to assist the student in reaching those goals.

If the student does not attend the IEP team meeting, the district shall take other steps to ensure that the student's preferences and interests are considered.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

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**Law Implemented:** SDCL 13-37-1.1.

**Cross-References:** Transition services, § 24:05:27:13.02.

**24:05:25:17. Conduct of IEP team without parents.** An IEP team meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. The district must have written documentation of its attempts to arrange a mutually agreed upon time and place, such as the following:

- (1) Detailed records and dates of telephone calls made or attempted to parents and the results of those calls;
- (2) Detailed copies of dated correspondence sent to the parents and any responses received; and
- (3) Detailed records and dates of visits made to the parent's home or place of employment and the results of those visits.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:18. Action to ensure parent understands.** The district shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP team ~~a~~ meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:19. Parents to receive copy of individual education program.** The district shall give the parents a copy of the individual education program, at no cost. ~~developed at the IEP team meeting.~~

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:20. IEP team to evaluate, interpret, and explain.** The IEP team is responsible for assuring that a child has been appropriately evaluated and that all evaluation data are interpreted and explained to parents.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

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**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:21. IEP team to determine placement.** The IEP team shall determine whether the child is in need of special education or special education and related services.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:22. IEP team to develop individual education program.** If the child is determined to be in need of special education or special education and related services, the placement committee shall develop an appropriate individual education program for the child. At the beginning of each school year thereafter, the district must have in effect an IEP for each child with disabilities within its jurisdiction. For children beginning at age three, an IEP shall be in effect by that date. If a child's third birthday occurs during the summer, the placement committee shall determine the date when services under the IEP will begin. All IEPs shall be developed in accordance with the provisions of this article.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Individual educational program, ch 24:05:27.

**24:05:25:23. Decisions of IEP team.** All decisions of the IEP team shall be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP. An IEP must be in effect before special education and related services are provided to a child and must be implemented as soon as possible following a placement committee meeting.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:25:24. Short-term evaluation programs.** The placement of eligible children in short-term evaluation programs must provide for the following:~~

~~——(1) Developing an interim individual education program before providing special education or special education and related services;~~

**Draft**



~~—— (2) Obtaining written parental consent, including meeting the prior notice requirements before the child is placed in the program;~~

~~—— (3) Describing the special education or special education and related services to be provided and evaluations to be completed during the placement period; and~~

~~—— (4) Conducting an IEP team meeting at the end of the evaluation period for the purpose of finalizing an individual education program.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~—— **Cross Reference:** Procedural safeguards, ch 24:05:30.~~

~~**24:05:25:25. Duration of short-term evaluation.** The placement of an eligible student in a short-term evaluation program may not exceed 45 school days.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

~~—— **Cross Reference:** Procedural safeguards, ch 24:05:30.~~

**24:05:25:26. Extended school year authorized.** The district shall provide special education or special education and related services to eligible children if the IEP team determines on an individual basis that such services are necessary for the provision of FAPE.

An IEP pursuant to chapter 24:05:27 shall be developed and implemented by the IEP team. ~~and implemented with informed parental consent.~~ The IEP team shall determine the length of the school day and duration of extended school year services based on the individual child's needs.

In implementing the requirements of this section, a district may not:

- (1) Limit extended school year services to particular categories of disability;
- (2) Unilaterally limit the type, amount, or duration of those services; or
- (3) Apply a regression/recoupment criterion to children in need of prolonged assistance.

As used in this section, the term, extended school year services, means special education and related services that meet the standards of the state and are provided to a

**Draft**

student with a disability beyond the normal school year of the district, in accordance with the student's IEP and at no cost to the parents of the student.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:25:27. Transferred to § 24:05:24.01:02.**

**24:05:25:27.01. Transferred to § 24:05:24.01:03.**

**24:05:25:28. Diagnostic criteria for autism. Repealed.**

**Source:** 18 SDR 90, effective November 25, 1991; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:25:29. Transferred to § 24:05:24.01:05.**

**24:05:25:30. Transferred to § 24:05:24.01:06.**

## CHAPTER 24:05:26

### SUSPENSION

#### Section

- 24:05:26:01 Suspension from school.
- 24:05:26:01.01 Case-by-case determination.
- 24:05:26:01.02 Suspension from school -- Definitions.
- 24:05:26:02 Short-term suspension procedure.
- 24:05:26:02.01 Change of placement for disciplinary removals.
- 24:05:26:02.02 Removals -- Ten school days or less.
- 24:05:26:02.03 Required services -- No change of placement.
- 24:05:26:03 Written report required.
- 24:05:26:04 Right to request hearing -- Notice of hearing.
- 24:05:26:05 Right of waiver.
- 24:05:26:06 Hearing procedure.
- 24:05:26:07 Right of appeal.
- 24:05:26:08 Attendance policies.
- 24:05:26:08.01 Authority of school personnel – Weapons, ~~and~~ drugs and serious bodily injury.
- 24:05:26:08.02 Authority of hearing officer.
- 24:05:26:08.03 Parental notification.
- 24:05:26:09 Referral to IEP team for long-term suspension of pupils.
- 24:05:26:09.01 ~~Functional behavioral assessment and intervention plan.~~ Repealed.
- 24:05:26:09.02 Determination of interim alternative educational setting.
- 24:05:26:09.03 Manifestation determination review requirement.
- 24:05:26:09.04 Determination that behavior was a manifestation. ~~Procedures for conducting a manifestation review.~~
- 24:05:26:09.05 Determination that behavior was not manifestation of disability -- Additional authority of school personnel.
- 24:05:26:09.06 ~~Parent~~ Appeal.
- 24:05:26:09.07 Placement during appeals.
- 24:05:26:09.08 Expedited hearing -- Procedures.
- 24:05:26:10 ~~Application of ten-day rule.~~ Repealed.
- 24:05:26:11 Repealed.
- 24:05:26:12 ~~Court approval of suspension in lieu of parental permission.~~ Repealed.
- 24:05:26:13 ~~Burden of proof in court action.~~ Repealed.
- 24:05:26:14 Protections for students not yet eligible.
- 24:05:26:15 Referral to and action by law enforcement and judicial authorities.

**Draft**

**24:05:26:01. Suspension from school.** The suspension of pupils in need of special education or special education and related services includes the general due process procedures used for all pupils and the additional steps in the process specified in this chapter that a district must take if the student is receiving special education or special education and related services under an individualized education program.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**Cross-Reference:** Student due process, art 24:07.

**24:05:26:01.01 Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:26:01.02. Suspension from school -- Definitions.** Terms used in this chapter and chapter 24:05:26.01 mean:

(1) "Controlled substance," a drug or other substance identified under SDCL 34-20B-11 to 34-20B-26, inclusive;

(2) "Dangerous weapon," a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length;

(3) "Illegal drug," a controlled substance, but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under SDCL 34-20B-11 to 34-20B-26, inclusive, or under any provision of federal law; and

~~(4) "Substantial evidence," beyond a preponderance of the evidence.~~

(4) "Serious bodily injury," bodily injury that involves:

(a) A substantial risk of death;

(b) Extreme physical pain;

(c) Protracted and obvious disfigurement; or

**Draft**

- (d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:02. Short-term suspension procedure.** If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the procedure in § 24:07:02:01 applies.

**Source:** 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:02.01. Change of placement for disciplinary removals.** For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or  
(2) The student is subjected to a series of removals that constitute a pattern because:

- (a) They cumulate to more than ten school days in a school year; ~~and~~  
(b) Of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another; and  
(c) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:02.02. Removals -- Ten school days or less.** To the extent removal would be applied to students without disabilities, including alternative settings, school personnel may order the removal of a student with a disability from the student's current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than ten consecutive school days for any violation of a code of student conduct, school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct if those removals do not constitute a change of placement under § 24:05:26:02.01.

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**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:02.03. Required services -- No change of placement.** A school district need not provide services during periods of removal under § 24:05:26:02.02 to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. If a student with a disability has been removed from his or her current placement for more than ten school days in that school year, and the removal is not for more than 10 consecutive school days and is not a change in placement, the district, for the remainder of the removals, shall provide services to the extent necessary to enable the student to ~~appropriately progress~~ participate in the general curriculum and ~~appropriately advance to progress~~ toward meeting achieving the goals set out in the student's IEP. School personnel, in consultation with one of the student's ~~special education~~ teachers, shall determine the extent to which services are necessary to enable the student to participate ~~appropriately progress~~ in the general curriculum and ~~appropriately advance to progress~~ toward meeting achieving the goals set out in the student's IEP.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:03. Written report required.** If a long-term suspension is anticipated because of a pupil's violation of a policy, the procedure in § 24:07:03:01 applies.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:04. Right to request hearing -- Notice of hearing.** If the superintendent finds grounds for a long-term suspension from a class or classes, the procedure in § 24:07:03:02 applies.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:05. Right of waiver.** The pupil, if of the age of majority or emancipated, or the pupil's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:06. Hearing procedure.** The school board is the hearing board and shall conduct the hearing in the following manner:

(1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;

(2) Each party may make an opening statement;

(3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;

(4) Each party may be represented by an attorney;

(5) The school administration shall present its case first;

(6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device;

(7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president or business manager;

(8) Each party may raise objections; however, objections are limited to relevancy and scope of the question;

(9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;

(10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;

(11) Each party may make a closing statement;

(12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the pupil is present; and

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(13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion shall omit the name of the pupil and shall state the reason for the board's action. The school board shall notify the pupil's parents or a pupil who is 18 years of age or older or an emancipated minor in writing of the decision. The notice shall state the length of the suspension.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:07. Right of appeal.** The pupil may appeal an adverse decision by the school board to the circuit court.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:08. Attendance policies.** The attendance policy of a school district may not exclude a pupil from a class or from a school for more than ten days without providing due process pursuant to this chapter.

**Source:** 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:08.01. Authority of school personnel – Weapons, and drugs and serious bodily injury.** School personnel may remove a student ~~order a change in placement of a student with a disability~~ to an appropriate interim alternative setting ~~for the same amount of time that a student without a disability would be subject to discipline,~~ but for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:

(1) The student carries a weapon to or possesses a weapon at school, on school premises, or at school or to a school function under the jurisdiction of a state or local education agency; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or

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(3) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state education agency or a school district.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:26:08.02. Authority of hearing officer.** A hearing officer under section 615 of the Individuals with Disabilities Education Act may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing:~~

~~—— (1) Determines that the district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;~~

~~—— (2) Considers the appropriateness of the student's current placement;~~

~~—— (3) Considers whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and~~

~~—— (4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's education teacher meets the requirements of § 24:05:26:09.02.~~

A hearing officer under this article hears, and makes a determination regarding an appeal under this chapter. In making the determination under this section, the hearing officer may:

(1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this chapter or that the student's behavior was a manifestation of the student's disability; or

(2) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

The procedures under this section may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

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**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:08.03. Parental Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in chapter 24:05:30.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:26:09. Referral to IEP team for long-term suspension of pupils.** If a pupil identified as in need of special education or special education and related services pursuant to SDCL 13-37-1 is the subject of long-term suspension, a referral shall be made by the superintendent or chief administering officer to the district's IEP team.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1, 13-32-4.

**Law Implemented:** SDCL 13-37-1.1, 13-32-4.

~~**24:05:26:09.01. Functional behavioral assessment and intervention plan.** Within ten business days after first removing a student for more than ten school days in a school year or for weapons violations, drugs violations, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the school district:~~

~~—— (1) If the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the suspension occurred, the district shall convene an IEP team meeting to develop an assessment plan;~~

~~—— (2) If the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior;~~

~~—— (3) As soon as practicable after developing the plan described in subdivision (1) of this section, and completing the assessments required by the plan, the district shall convene an IEP team meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions;~~

~~—— (4) If a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subsequently subjected to a removal that does not constitute a change of placement under § 24:05:26:02.01, IEP team members shall review~~

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~~the behavioral intervention plan and its implementation to determine whether modifications are necessary.~~

~~—— If one or more of the IEP team members believe that modifications are needed, the committee shall meet to modify the plan and its implementation to the extent the committee determines necessary.~~

~~—— **Source:** 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:26:09.02. Determination of interim alternative educational setting.** The student's IEP team shall determine the Any interim alternative educational setting in which a student is placed under §§ 24:05:26:08.01, 24:05:26:02.01, and 24:05:26:09.05. ~~24:05:26:08.02 shall:~~

~~(1) Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in the individualized education program; and~~

~~—— (2) Include services and modifications designed to address the behavior described in §§ 24:05:26:08.01 and 24:05:26:08.02 that are designed to prevent the behavior from recurring.~~

~~—— The individualized education program team shall determine an interim alternative educational setting referred to in § 24:05:26:08.01.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:09.03. Manifestation determination review requirement.** ~~If an action is contemplated by school district personnel or a hearing officer that involves removing a student for weapons violations, drug violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement under § 24:05:26:02.01, the following actions shall be taken by the school district:~~

~~—— (1) Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice in this article; and~~

~~—— (2) As soon as possible, but in no case later than ten school days after the date on which the decision to remove the student is made, a review must be conducted of the~~

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~~relationship between the student's disability and the behavior subject to the disciplinary action.~~

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(2) If the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision (1) or (2) of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine the condition described in subdivision (2) of this section was met, the district shall take immediate steps to remedy those deficiencies.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:09.04. Determination that behavior was a manifestation. Procedures for conducting a manifestation review.** ~~The IEP team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team:~~

~~—— (1) First considers, in terms of the behavior subject to disciplinary action, all relevant information including:~~

~~—— (a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;~~

~~—— (b) Observations of the student; and~~

~~—— (c) The student's individualized education program and placement; and~~

~~—— (2) Then determines that:~~

~~—— (a) In relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies~~

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~~were provided consistent with the student's individualized education program and placement;~~

~~—— (b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and~~

~~—— (c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.~~

~~—— If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's ability. The manifestation determination review described in this section may be conducted at the same IEP team meeting that is convened to address a functional behavioral assessment and behavioral intervention plan. If the review identifies deficiencies in the student's IEP or placement or in their implementation, the district must take immediate steps to remedy those deficiencies.~~

If the school district, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the student's disability, the IEP team must:

(1) Either:

(a) Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in 24:05:26:08.01, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26:09.05. Determination that behavior was not manifestation of disability - - Additional authority of school personnel.** ~~If the results of the manifestation determination review indicate that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education shall continue to be made available to those students consistent with this article.~~

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~~—— The student's IEP team shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.~~

~~—— If the school district initiates disciplinary procedures applicable to all students, the district shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.~~

~~—— If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, the student shall remain in the student's current educational placement as described in chapter 24:05:30 or interim alternative educational setting consistent with § 24:05:26:09.07, whichever applies.~~

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to this chapter, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in this section.

A student with a disability who is removed from the student's current placement pursuant to this section or 24:05:26:08.01 must:

(1) Continue to receive educational services, as provided in this article, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:26:09.06. Parent Appeal.** If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing. The school district shall arrange for an expedited hearing in any case described in this section if requested by the parent. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the district has demonstrated that the student's behavior was not a manifestation of the~~

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~~student's disability consistent with § 24:05:26:09.04. In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards under § 24:05:26:08.02.~~

The parent of a student with a disability who disagrees with any decision regarding placement under this chapter, or the manifestation determination, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to this article.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:26:09.07. Placement during appeals.** If a parent requests a hearing regarding a disciplinary action described in §§ 24:05:26:08.01 and 24:05:26:08.02 to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period provided for, whichever occurs first, unless the parent and the school district agree otherwise.~~

~~—— If a student is placed in an interim alternative educational setting pursuant to §§ 24:05:26:08.01 and 24:05:26:08.02 and school personnel propose to change the student's placement after expiration of the interim alternative placement during the pendency of any proceeding to challenge the proposed change in placement, the student must remain in the current placement (the student's placement before the interim alternative education setting) except as provided in this section.~~

~~—— If school personnel maintain that it is dangerous for the student to be in the current placement (placement before removal to the interim alternative education setting) during the pendency of the due process proceedings, the district may request an expedited due process hearing. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under § 24:05:26:08.02. A placement ordered pursuant to this section may not be longer than 45 days. The procedure in this section may be repeated as necessary.~~

When an appeal under this chapter has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 24:05:26:08.01 or 24:05:26:09.05, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:26:09.08. Expedited hearing -- Procedures.** ~~An expedited due process hearing shall:~~

~~—— (1) Result in a written decision being mailed to the parties within forty-five (45) days of the district's receipt of the request for the hearing without exceptions or extensions;~~

~~—— (2) Meet the hearing rights requirements under chapter 24:05:30, except that the time periods for disclosure of records and evaluations are not less than two business days; and~~

~~—— (3) Be conducted by a due process hearing officer who satisfies the impartiality requirements of chapter 24:05:30.~~

Whenever a hearing is requested under this chapter, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of this article, except as provided in this section.

The department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.

Unless the parents and school district agree in writing to waive the resolution meeting described in this section, or agree to use the mediation process described in chapter 24:05:30:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

~~The decisions on expedited due process hearings are appealable under the state's normal due process appeal procedures.~~ consistent with chapter 24:05:30.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:26:10. Application of ten-day rule.** A suspension of more than ten consecutive school days is a change in placement and requires that prior notice be given to a parent, including the right to a due process hearing as specified in this chapter. Nothing in this chapter authorizes a principal or superintendent to suspend a pupil for more than ten days without board action.~~

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—— **Source:** 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

—— **General Authority:** SDCL 13-37-1.1, 13-32-4.

—— **Law Implemented:** SDCL 13-37-1.1, 13-32-4.

—— **Cross-Reference:** Procedural safeguards, ch 24:05:30.

**24:05:26:11. Parental approval required for suspension in excess of ten school days.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:26:12. Court approval of suspension in lieu of parental permission.** If the school district needs to suspend an eligible pupil for more than ten consecutive school days and the school is not able to obtain parental agreement for an interim placement or continued suspension, the school district shall apply to a court of competent jurisdiction for permission to do so.~~

—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

—— **General Authority:** SDCL 13-37-1.1, 13-32-4.

—— **Law Implemented:** SDCL 13-37-1.1, 13-32-4.

~~**24:05:26:13. Burden of proof in court action.** In filing a suit under the Individuals with Disabilities Education Act, Part B, for appropriate injunctive relief where agreement cannot be reached with the parent for a change of placement, there is a presumption in favor of an eligible pupil's current educational placement which school officials may rebut only by showing that maintaining the current placement is substantially likely to result in injury to the pupil or to others.~~

—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

—— **General Authority:** SDCL 13-37-1.1, 13-32-4.

—— **Law Implemented:** SDCL 13-37-1.1, 13-32-4.

**24:05:26:14. Protections for students not yet eligible.** A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

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(1) The parent of the student has expressed concern in writing ~~(or orally if the parent does not know how to write or has a disability that prevents a written statement)~~ to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

~~(2) The behavior or performance of the student demonstrates the need for these services;~~

(2) The parent of the student has requested an evaluation of the student pursuant to this article; or

(3) The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of the behavior demonstrated by ~~or performance of~~ the student directly to the director of special education of the district or to other supervisory personnel of the district. ~~in accordance with their established child find or special education referral system.~~

A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to this article, or has refused services under this article, or as a result of receiving the information, the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability. ~~or determined that an evaluation was not necessary and if the district provided notice to the student's parents of its determination consistent with this article.~~

If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:26:15. Referral to and action by law enforcement and judicial authorities.** Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended. ~~to November 1, 1999.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

## CHAPTER 24:05:26.01

### EXPULSION

#### Section

24:05:26.01:01	Expulsion from school.
<u>24:05:26.01:02</u>	<u>Case-by case determination.</u>
24:05:26.01:03	Written report required.
24:05:26.01:04	Request and notice of hearing.
24:05:26.01:05	Right of waiver.
24:05:26.01:06	Hearing procedure.
24:05:26.01:07	Right of appeal.
24:05:26.01:08	Attendance policies.
24:05:26.01:08.01	Authority of school personnel – Weapons, <del>and</del> drugs, <u>and serious bodily injury.</u>
24:05:26.01:08.02	Authority of hearing officer.
<u>24:05:26.01:08.03</u>	<u>Parental notification.</u>
24:05:26.01:09	Referral to IEP team for expulsion of students.
24:05:26.01:09.01	Applicability of suspension procedures.
24:05:26.01:09	<del>Application of ten-day rule.</del> <u>Repealed.</u>
24:05:26.01:10	Repealed.
24:05:26.01:11	<del>Court approval of expulsion in lieu of parental permission.</del> <u>Repealed.</u>
24:05:26.01:12	<del>Burden of proof in court action.</del> <u>Repealed.</u>
24:05:26.01:13	Protections for students not yet eligible.
24:05:26.01:14	Referral to and action by law enforcement and judicial authorities.

**24:05:26.01:01. Expulsion from school.** The expulsion of students in need of special education or special education and related services includes the general due process procedures used for all students and the additional steps in the process specified in this chapter that a district must take when the student is receiving special education or special education and related services under an individual education program.

**Source:** 23 SDR 179, effective April 29, 1997; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-32-1, 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-1, 13-32-4, 13-37-1.1.

**Cross-Reference:** Student due process, art 24:07.

**24:05:26.01:02. Case-by-case determination.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in

**Draft**

placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:26.01:03. Written report required.** If an expulsion is anticipated because of a student's violation of rules or policies or for insubordination or misconduct, the procedure in § 24:07:04:01 applies.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

**24:05:26.01:04. Request and notice of hearing.** If the superintendent finds grounds for expulsion from school, the procedure in § 24:07:04:02 applies.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

**24:05:26.01:05. Right of waiver.** A competent student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date and at the time and place set in the hearing notice unless a different date, time, and place are agreed to by the parties. If the hearing is waived in writing, the school board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-1-12.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

**24:05:26.01:06. Hearing procedure.** The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;

**Draft**

- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president, hearing officer, or other person authorized by law to take oaths or affirmations;
- (8) Each party may raise any legal objections to evidence;
- (9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a closing statement;
- (12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the student is present; and
- (13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion shall omit the name of the student and shall state the reason for the board's action. The school board shall notify the student's parent or parents or a student who is 18 years of age or older or who is an emancipated minor in writing of the decision. The notice shall state the length of the expulsion.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

**24:05:26.01:07. Right of appeal.** The student may appeal an adverse decision by the school board to the circuit court.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

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**24:05:26.01:08. Attendance policies.** The attendance policy of a school district may not exclude a student from one or more classes or from a school for more than ten consecutive school days without providing the due process procedures in this chapter or chapter 24:07:03.

**Source:** 23 SDR 179, effective April 29, 1997.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

**24:05:26.01:08.01. Authority of school personnel – Weapons, ~~and~~ drugs, and serious bodily injury.** School district personnel shall follow the procedures under § 24:05:26:08.01 if an expulsion is anticipated because of a student's violation of rules or policies pertaining to weapons and drugs.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26.01:08.02. Authority of hearing officer.** The authority of a hearing officer, in an expedited due process hearing, described under § 24:05:26:08.02, applies if an expulsion is anticipated because a student's behavior is substantially likely to result in injury to the student or to others.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26.01:08.03 Parental Notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice described in chapter 24:05:30.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:26.01:09. Referral to IEP team for expulsion of students.** If a student identified in need of special education or special education and related services pursuant to SDCL 13-37-1 is the subject of proposed expulsion, the superintendent or chief administering officer shall refer the matter to the IEP team.

**Source:** 23 SDR 179, effective April 29, 1997; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-32-4, 13-37-1.1.

**Law Implemented:** SDCL 13-32-4, 13-37-1.1.

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**24:05:26.01:09.01. Applicability of suspension procedures.** The suspension procedures described in §§ 24:05:26:09.02 to 24:05:26:09.08, inclusive, apply if an expulsion is anticipated.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:26.01:09. Application of ten-day rule.** An expulsion from one or more classes or from a school for more than ten consecutive school days is a change in placement and requires that prior notice be given to a parent, including the right to a due process hearing as specified in this chapter. Nothing in this chapter authorizes a principal or superintendent to remove a student from one or more classes or from a school for more than ten consecutive school days without board action.~~

—— ~~**Source:** 23 SDR 179, effective April 29, 1997.~~

—— ~~**General Authority:** SDCL 13-32-4, 13-37-1.1.~~

—— ~~**Law Implemented:** SDCL 13-32-4, 13-37-1.1.~~

—— ~~**Cross-Reference:** Procedural safeguards, ch 24:05:30.~~

**24:05:26.01:10. Parental approval required for expulsion in excess of ten consecutive school days.** Repealed.

**Source:** 23 SDR 179, effective April 29, 1997; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:26.01:11. Court approval of expulsion in lieu of parental permission.** If the school district needs to expel an eligible student for more than ten consecutive school days and the school is not able to obtain parental agreement for an interim placement or expulsion, the school district shall apply to a court of competent jurisdiction for permission to do so.~~

—— ~~**Source:** 23 SDR 179, effective April 29, 1997.~~

—— ~~**General Authority:** SDCL 13-1-12.1, 13-32-1, 13-32-4.~~

—— ~~**Law Implemented:** SDCL 13-37-1.1, 13-37-14.~~

~~**24:05:26.01:12. Burden of proof in court action.** In filing a suit under the Individuals with Disabilities Education Act, Part B, for appropriate injunctive relief where agreement cannot be reached with the parent for a change of placement, there is a presumption in favor of an eligible student's current educational placement which school officials may rebut only by a showing that maintaining the current placement is substantially likely to result in injury to the student or to others. In addition, the school district must demonstrate that it has made reasonable efforts to minimize the risk that the student will cause injury.~~

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~~Source: 23 SDR 179, effective April 29, 1997; 26 SDR 150, effective May 22, 2000.~~

~~General Authority: SDCL 13-32-4, 13-37-1.1.~~

~~Law Implemented: SDCL 13-32-4, 13-37-1.1.~~

~~Cross-Reference: OSEP Memorandum 95-16 dated April 26, 1995, to Chief State School Officer from Judith E. Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, United States Department of Education, and Thomas Hehir, Director, Office of Special Education programs, entitled "Questions and Answers on Disciplining Students with Disabilities."~~

**24:05:26.01:13. Protections for students not yet eligible.** The procedures under § 24:05:26:14 apply for students who have not been determined eligible for special education or special education and related services if an expulsion is anticipated.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:26.01:14. Referral to and action by law enforcement and judicial authorities.** Reporting a crime committed by a student with a disability and the transmission of student records shall be implemented consistent with § 24:05:26:15.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**CHAPTER 24:05:27**

**INDIVIDUAL EDUCATIONAL PROGRAM**

Section

- 24:05:27:01 Repealed.
- 24:05:27:01.01 IEP team.
- 24:05:27:01.02 Development, review, and revision of individualized education program.
- 24:05:27:01.03 Content of individualized education program.
- 24:05:27:01.04 Access to IEP.
- 24:05:27:01.05 IEP team attendance.
- 24:05:27:01.06 Initial IEP team meeting for infants and toddlers.
- 24:05:27:02 IEP team meeting date.
- 24:05:27:03 IEP team to determine related services.
- 24:05:27:04 Determination of related services.
- 24:05:27:04.01 Parental consent for services.
- 24:05:27:04.02 Parental refusal to consent -- School district obligations.
- 24:05:27:05 Hearing aid.
- 24:05:27:05.01 External components of surgically implanted medical devices.
- 24:05:27:06 Medical services.
- 24:05:27:07 Transportation.
- 24:05:27:08 Yearly review and revision of individual educational programs.
- 24:05:27:08.01 Agreement to change IEP.
- 24:05:27:08.02 Amendments to IEPs.
- 24:05:27:08.03 Consolidation of IEP team meetings.

**Draft**

- 24:05:27:08.04 Alternative means of meeting participation.
- 24:05:27:09 Repealed.
- 24:05:27:10 Individual educational programs for students placed in private schools.
- 24:05:27:11 Repealed.
- 24:05:27:12 Graduation requirements.
- 24:05:27:13 ~~Modifications to regular vocational program.~~ Repealed.
- 24:05:27:13.01 Agency responsibilities for transition services.
- 24:05:27:13.02 Transition services.
- 24:05:27:14 ~~Individual educational program accountability.~~ Repealed.
- 24:05:27:15 Repealed.
- 24:05:27:15.01 IEPs for student transfers within state.
- 24:05:27:15.02 IEPs for student transfers from ~~outside~~ another state.
- 24:05:27:15.03 Transmittal of records for student transfers.
- 24:05:27:16 Related services provided at no cost.
- 24:05:27:16.01 Rehabilitation counseling services.
- 24:05:27:16.01 Services applicable to surgically implanted device.
- 24:05:27:17 Employment of Braille teacher.
- 24:05:27:18 Assistive technology device.
- 24:05:27:19 Assistive technology service.
- 24:05:27:19.01 Universal design.
- 24:05:27:20 Availability of assistive technology.
- 24:05:27:21 Transition to preschool program.
- 24:05:27:22 Occupational therapy defined.

- 24:05:27:23 Criteria for occupational therapy.
- 24:05:27:24 Physical therapy defined.
- 24:05:27:25 Criteria for physical therapy.
- 24:05:27:26 Incarcerated students in adult prisons.
- 24:05:27:27 Modifications to IEPs for students in adult prisons.

**24:05:27:01. Requirements for individual educational program.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:27:01.01. IEP team.** Each school district shall ensure that the IEP team for each student with disabilities include the following members:

- (1) The parents of the student;
- (2) Not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment;
- (3) Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student;
- (4) A representative of the school district who:
  - (a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
  - (b) Is knowledgeable about the general education curriculum; and
  - (c) Is knowledgeable about the availability of resources of the school district;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions 2 to 6, inclusive, of this section;
- (6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate;
- (7) If appropriate, the student; and

**Draft**

(8) Transition services participants as described in §§ 24:05:25:16.01 and 24:05:25:16.02.

The determination of the knowledge or special education expertise of any individual described in this section shall be made by the party (parents or district) who invited the individual to be a member of the placement committee. A district may designate another district member of the IEP team to also serve as the district representative, if the criteria in this section are satisfied.

**Source:** 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:01.02. Development, review, and revision of individualized education program.** In developing, reviewing, and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, the academic, developmental, and functional needs of the student ~~and as appropriate, the results of the student's performance on any general state or district wide assessment programs.~~ The individualized education program team also shall:

(1) In the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;

(2) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;

(3) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in

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Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(4) Consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(5) Consider whether the student requires assistive technology devices and services.

~~If, in considering the special factors described above, the team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education, the team must include a statement to that effect in the student's individualized education program.~~

The regular education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including ~~assisting in~~ the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student consistent with 24:05:27:01.03(3).

Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program. No additional information may be required to be included in a student's IEP beyond what is explicitly required in this section.

**Source:** 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:01.03. Content of individualized education program.** Each student's individualized education program shall include:

**Draft**

(1) A statement of the student's present levels of academic achievement and functional performance, including:

(a) How the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled students); or

(b) For preschool student, as appropriate, how the disability affects the student's participation in appropriate activities; ~~and~~

~~(c) For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;~~

(2) A statement of measurable annual goals, including academic and functional goals, designed to:

(a) Meet the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and

(b) Meet each of the student's other educational needs that result from the student's disability;

(c) For students with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided ~~for~~ to enable the student:

(a) To advance appropriately toward attaining the annual goals;

(b) To be involved and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and

(c) To be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;

(4) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in activities described in this section;

**Draft**

(5) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with 24:05:14:14 ~~including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965~~. If the IEP team determines that the student shall take an alternate assessment instead of ~~on~~ a particular regular state or district-wide assessment of student achievement, a statement of why:

(a) The student cannot participate in the regular assessment; and

(b) The particular alternate assessment selected is appropriate for the student;

(6) The projected date for the beginning of the services and modification described in this section and the anticipated frequency, location, and duration of those services and modifications;

(7) A description of how the student's progress toward the annual goals described in this section will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(8) Beginning not later than the first IEP to be in effect when the student turns is 16, or younger if determined appropriate by the IEP team and updated annually thereafter the IEP shall include:

(a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and

(b) The transition services (including courses of study) needed to assist the student in reaching those goals; and

(9) Beginning not later than one year before a student reaches the age of majority under state law, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with 24:05:30:16.01.

**Source:** 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:27:01.04. Access to IEP.** Each school district shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation. Each teacher and provider described above is informed of:

- (1) His or her specific responsibilities related to implementing the child's IEP; and
- (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:01.05. IEP team attendance.** A member of the IEP team described in 24:05:27:01.01(1) through (5) is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A member of the IEP team may be excused from attending, in whole or in part, an IEP team meeting that involves a modification to or discussion of the member's area of the curriculum or related services, if:

- (1) The parent and school district consent in writing to the excusal; and
- (2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:01.06. Initial IEP team meeting for infants and toddlers.** If a student was previously served under part C, an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

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**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:02. IEP team meeting date.** IEP team meetings must be held within 30 days of a determination that the child needs special education and related services ~~after receipt of evaluation results. Each school district shall ensure that preplacement evaluations and reevaluations are completed consistent with §§ 24:05:25:03 and 24:05:25:06; and if the child is determined eligible under this article,~~ As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with an IEP.

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:03. IEP team to determine related services.** In developing a child's individual educational program, the members of the IEP team shall determine whether any developmental, corrective, or other supportive services, including transportation, are required to assist a child to benefit from special education. These services must be written into the individual educational program as related services.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:04. Determination of related services.** In deciding whether a particular developmental, corrective, or other supportive service is a related service, the members of the IEP team shall review the results of the individual evaluations used to determine the child's need for special education. Based on the specific special education services to be provided, the team shall determine whether or not related services are required in order to implement the special education program being recommended.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:04.01. Parental consent for services.** A school district that is responsible for making a free appropriate public education available to a student with a disability under

**Draft**

this article shall ~~seek to~~ obtain informed consent from the parent of the student before initially providing special education and related services to the student.

The district shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. To meet the reasonable efforts requirement, the district shall document its attempts to obtain parental consent using the procedures in 24:05:25:17.

If the parent of such student fails to respond or refuses to consent to services, the school district may not use the procedures in chapter 24:05:30, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the child. ~~shall not provide special education and related services to the student by utilizing the procedures described in chapter 24:05:30.~~

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:04.02. Parental refusal to consent -- School district obligations.** If the parent of a student refuses to consent to the initial provision ~~receipt~~ of special education and related services, or the parent fails to respond to a request to provide such consent:

(1) The school district is not considered to be in violation of the requirement to make available free appropriate public education to the student for the failure to provide the student with the special education and related services for which the school district requests such consent; and

(2) The school district is not required to convene an IEP meeting or develop an IEP under this chapter for the student for the special education and related services for which the school district requests such consent.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:05. Hearing aid.** For children with hearing impairments, including deafness, in need of special education who wear hearing aids, in school, the IEP team shall include, as a related service, a monitoring schedule in the individual educational program to ensure the proper functioning of these corrective devices.

**Draft**

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:05.01. External components of surgically implanted medical devices.** Each school district shall ensure that the external components of surgically implanted medical devices are functioning properly.

For a child with a surgically implanted medical device who is receiving special education and related services under this article, a school district is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:27:06. Medical services.** Medical services, as a related service, may only be authorized by an IEP team for diagnostic or evaluation purposes.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:07. Transportation.** If transportation is required for the child to benefit from the special education program, transportation shall be written in the individual educational program and provided at no cost to the parent. A district may not require that a parent provide transportation; however, if both parties agree that the parent will provide the transportation, it shall be noted on the individual educational program and the parent shall be reimbursed by the district in accordance with SDCL 13-30-3 and 13-37-8.9.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Draft**

**24:05:27:08. Yearly review and revision of individual educational programs.** Each school district shall initiate and conduct IEP team meetings to periodically review each child's individual educational program and, if appropriate, revise its provisions. An IEP team meeting must be held for this purpose at least once a year. The review shall be conducted to determine whether the annual goals for the student are being achieved. The individualized education program shall be revised, as appropriate, to address: any lack of expected progress toward the annual goals and in the general curriculum, if appropriate; the results of any reevaluation conducted; information about the student provided to, or by, the parents; the student's anticipated needs; or other matters.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:08.01. Agreement to change IEP.** In making changes to a student's IEP after the annual IEP meeting for a school year, the parent of a student with a disability and the school district may agree not to convene an IEP meeting for the purposes of making ~~such~~ those changes, and instead may develop a written document to amend or modify the student's current IEP.

If changes are made to the student's IEP in accordance with this section, the district shall ensure that the student's IEP team is informed of those changes.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:08.02. Amendments to IEP.** Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or, as provided in § 24:05:27:08.01, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Draft**

**24:05:27:08.03. Consolidation of IEP team meetings.** To the extent possible, the school district shall encourage the consolidation of reevaluation meetings for the student and other IEP team meetings for the student.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:08.04. Alternative means of meeting participation.** When conducting IEP team meetings and placement meetings pursuant to this section and chapter 24:05:30, and carrying out administrative matters under chapter 24:05:30 (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:09. Revision of individual educational program upon change.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; repealed, 32 SDR 41, effective September 11, 2005.

**24:05:27:10. Individual educational programs for students placed in private schools.** Before a resident school district places or refers a child in need of special education or special education and related services to a private school, facility, or a contracting district, the district shall initiate and conduct an IEP team meeting to develop an individual educational program for the child in accordance with district procedures.

**Draft**

The district shall ensure that a representative of the private school or facility attends the IEP team meeting. If the representative of the private school or facility cannot attend the IEP team meeting, the district shall use other methods to ensure participation, including individual or conference telephone calls.

~~The district shall develop an individual educational program for each child in need of special education or special education and related services who was placed in a private school or facility by the district before the effective date of the Individuals with Disabilities Education Act, Part B regulations.~~

After a child in need of special education or special education and related services enters a private school or facility, any meetings to review and revise the child's individual educational program may be initiated and conducted by the private school or facility at the discretion of the district.

If the private school or facility initiates and conducts these meetings, the district shall ensure that the parents and a district representative are involved in any decision about the child's individual educational program and agree to any proposed changes in the program before those changes are implemented.

Even if a private school or facility implements a child's individual educational program, responsibility for compliance with this section remains with the school district and the department.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:11. Individual educational programs for students voluntarily enrolled in nonpublic schools.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:27:12. Graduation requirements.** Completion of an approved secondary special education program with a regular high school diploma signifies that the student no longer requires special education services. A regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED). Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with this article.

**Draft**

The instructional program shall be specified on the individual educational program. The individual educational program shall state specifically how the student in need of special education or special education and related services will satisfy the district's graduation requirements. Parents must be informed through the individual educational program process at least one year in advance of the intent to graduate their child upon completion of the individual educational program and to terminate services by graduation.

For a student whose eligibility terminates under the above graduation provisions, or due to exceeding the age eligibility for a free appropriate public education, a school district shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Child identification, ch 24:05:22.

~~**24:05:27:13. Modifications to regular vocational program.** If modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the individual educational program. If the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's individual educational program.~~

~~Information regarding the availability of transitional services for students in need of special education or special education and related services at the secondary level shall be provided in a manner comparable to those services offered to students in the regular education program. Vocational and transitional services shall be addressed in a student's individual educational program beginning at the age of 16 or at a younger age as determined by the placement committee.~~

~~**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~**General Authority:** SDCL 13-37-1.1.~~

~~**Law Implemented:** SDCL 13-37-1.1.~~

**24:05:27:13.01. Agency responsibilities for transition services.** If a participating agency, other than the school district, fails to provide ~~agreed-upon~~ transition services

**Draft**



contained in the IEP of a student with a disability, the school district ~~public agency~~ responsible for the student's education shall, ~~as soon as possible, initiate~~ reconvene an IEP team meeting for the purpose of identifying alternative strategies to meet the transition objectives set out in ~~and, if necessary, revising~~ the student's IEP.

Nothing in this section relieves a participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

~~——— A participating agency is a state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.~~

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:13.02. Transition services.** Transition services are a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to postschool activities, including postsecondary education, vocational education training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Draft**

**24:05:27:14. Individual educational program accountability.** ~~Each school district must provide a child in need of special education or special education and related services with services in accordance with an individual educational program and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. However, no school district, teacher, or other person may be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.~~

~~Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that the efforts required in this section are not being made.~~

~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

**24:05:27:15. Eligible student moving into another district.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; repealed, 32 SDR 41, effective September 11, 2005.

**24:05:27:15.01. IEPs for student transfers within state.** ~~If a student with a disability transfers school districts within the same academic year, enrolls in a new school, and had an IEP that was in effect in the state, the school district shall provide the student with a free appropriate public education. This includes providing services comparable to those described in the previously held IEP, in consultation with the parents, until the school district adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with federal and state law.~~

If a student with a disability, who had an IEP that was in effect in a previous school district in the state, transfers to a new school district in the state, and enrolls in a new school within the same school year, the new school district, in consultation with the parents, shall provide FAPE to the student, including services comparable to those described in the student's IEP from the previous school district, until the new school district either:

- (1) Adopts the student's IEP from the previous school district; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in this chapter.

**Draft**

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:15.02. IEPs for student transfers from outside another state.** ~~If a student with a disability transfers school districts within the same academic year, enrolls in a new school, and had an IEP that was in effect in another state, the school district shall provide the student with a free appropriate public education. This includes providing services comparable to those described in the previously held IEP, in consultation with the parents, until the school district conducts an evaluation pursuant to chapter 24:05:25, if determined to be necessary by the school district, and develops a new IEP, if appropriate, that is consistent with federal and state law.~~

If a student with a disability, who had an IEP that was in effect in a previous school district in another state, transfers to a school district in South Dakota, and enrolls in a new school within the same school year, the new school district, in consultation with the parents, shall provide the child with FAPE, including services comparable to those described in the student's IEP from the previous school district, until the new school district:

(1) Conducts an evaluation pursuant to chapter 24:05:25, if determined to be necessary by the new school district; and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in this chapter.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:15.03. Transmittal of records for student transfers.** To facilitate the transition for a transfer student described in §§ 24:05:27:15.01 and 24:05:27:15.02:

(1) The new school in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the student, from the previous school in which the student was enrolled, pursuant to § 99.31(a)(2) of the federal Family Educational Rights and Privacy Act as amended to July 1, 2005; and

**Draft**

(2) The previous school in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new school.

**Source:** 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:16. Related services provided at no cost.** The district shall provide services at no cost to the parent. Related services include transportation; speech-language pathology; audiological services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services; including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school nurse and school health services designed to enable a student with a disability to receive a free appropriate public education as described in the IEP of the student; social work services in schools; and parental counseling and training. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g. mapping), maintenance of that device, or the replacement of the device.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 32 SDR 41, effective September 11, 2005.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:16.01. Rehabilitation counseling services.** Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended through May 9, 1980.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Draft**

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:16.02. Services applicable to surgically implanted device.** Nothing in this section:

(1) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services listed in 24:05:27:16 that are determined by the IEP Team to be necessary for the child to receive FAPE;

(2) Limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(3) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in 24:05:27:05.01.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:27:17. Employment of Braille teacher.** If an IEP team determines that a student's instruction in reading and writing must be accomplished through the use of Braille, the district shall utilize the services of a certified Braille teacher. By July 1, 1993, all individuals employed as a Braille teacher must be certified pursuant to subdivision 24:02:01:09(27).

**Source:** 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-31.

**Law Implemented:** SDCL 13-37-31.

**24:05:27:18. Assistive technology device.** An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities. An assistive technology device does not include a medical device that is surgically implanted, or the replacement of the device.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 32 SDR 41, effective September 11, 2005.

**Draft**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:19. Assistive technology service.** An assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

- (1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a child with disabilities or, the child's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:19.01. Universal design.** Universal design is a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable without requiring assistive technologies and products and services that are made usable with assistive technologies.

**Source:** 32 SDR 41, effective September 11, 2005.

**Draft**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1

**24:05:27:20. Availability of assistive technology.** Each public agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if they are required as a part of the child's special education or related services or as supplementary aids and services.

~~Assistive technology devices and services must be provided only if they are required in order for a child to receive a free appropriate public education.~~

On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the student's placement committee determines that the child needs access to those devices in order to receive FAPE.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:21. Transition to preschool program.** Each local school district shall develop policies and procedures for the transition of children participating in the early intervention program under Part C of the Individuals with Disabilities Education Act (IDEA) who are eligible for participation in preschool programs under Part B of IDEA.

Each district's policies and procedures must include the following:

- (1) A description of how the families will be included in the transitional plans;
- (2) Procedures to be used by the district for notifying the local network in which the child resides of the need for transitional planning;
- (3) Procedures for convening, with the approval of the family, a conference between the network, family, and district;
- (4) A requirement for convening the conference at least 90 days, and at the discretion of all parties, not more than 9 months before the child is eligible for the preschool program under Part B of Individual with Disabilities Education Act; and
- (5) Procedures for reviewing a child's program options for the period beginning with the day a child turns three and running through the remainder of the school year including the development and implementation of an individual education program consistent with this article.

**Draft**

Each affected district shall participate in transition planning conferences arranged by the IDEA, Part C, program.

~~The district shall provide the family with information on the eligibility and evaluation requirements under Part B of Individual with Disabilities Education Act, including the parents' and district's rights regarding procedural safeguards.~~

In the case of a child with a disability, aged three, previously eligible for Part C of IDEA, the IEP team must consider the child's IFSP that contains the IFSP content, including the natural environments statement, described in article 24:14.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Procedural safeguards, ch 24:05:30.

**24:05:27:22. Occupational therapy defined.** Occupational therapy, as a related service, includes: ~~the development of fine motor coordination; sensory motor skills; sensory integration; visual motor skills; use of adaptive equipment; consultation and training in handling, positioning, and transferring students with physical impairments; and independence in activities of daily living.~~

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) Preventing, through early intervention, initial or further impairment or loss of function.

**Source:** 23 SDR 139, effective March 10, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:23. Criteria for occupational therapy.** A student may be identified as in need of occupational therapy as a related service if:

**Draft**



- (1) The student has a disability and requires special education;
- (2) The student needs occupational therapy to benefit from special education; and
- (3) The student demonstrates performance on a standardized assessment instrument that falls at least 1.5 standard deviations below the mean in one or more of the following areas: fine motor skills, sensory integration, and visual motor skills.

**Source:** 23 SDR 139, effective March 10, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:24. Physical therapy defined.** Physical therapy, as a related service, includes gross motor development; mobility; use of adaptive equipment; and consultation and training in handling, positioning, and transferring students with physical impairments.

**Source:** 23 SDR 139, effective March 10, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:25. Criteria for physical therapy.** A student may be identified as in need of physical therapy as a related service if:

- (1) The student has a disability and requires special education;
- (2) The student needs physical therapy to benefit from special education; and
- (3) The student demonstrates a delay of at least 1.5 standard deviations below the mean on a standardized motor assessment instrument.

**Source:** 23 SDR 139, effective March 10, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:26. Incarcerated students in adult prisons.** The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

- (1) Participation of students with disabilities in general assessment; and

**Draft**

(2) Transition planning and services with respect to the student whose eligibility under this article will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:27:27. Modifications to IEPs for students in adult prisons.** The IEP team may modify the student's individualized education program or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. However, these modifications do not apply with respect to:

(1) The development, review, and revision of individualized education programs as described in this chapter;

(2) Content of the individualized education program with the exception of general assessment and transition as noted above; and

(3) The least restrictive environment provisions relating to being educated with nondisabled students and removal from the regular education environment.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

## CHAPTER 24:05:28

### LEAST RESTRICTIVE ENVIRONMENT

#### Section

24:05:28:01	Least restrictive program to be provided.
24:05:28:02	Continuum of alternative placements.
24:05:28:03	Factors in determining placements.
24:05:28:04	Program options.
24:05:28:05	Nonacademic and extracurricular services.
24:05:28:06	Nonacademic settings.
24:05:28:07	Children in public or private institutions.
24:05:28:08	Physical education services.
24:05:28:09	<del>Reintegration</del> <u>Repealed.</u>
24:05:28:10	Preschool programs.
24:05:28:11	Technical assistance and training.
24:05:28:12	Monitoring activities.

**24:05:28:01. Least restrictive program to be provided.** Children in need of special education or special education and related services, to the maximum extent appropriate shall be educated with children who are not disabled and shall be provided special programs and services to meet with individual needs which are coordinated with the regular educational program. ~~whenever appropriate.~~ Special classes, separate schooling, or other removal of children with disabilities from the regular educational classroom may occur only when the nature or severity of the child's needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:02. Continuum of alternative placements.** Alternative placements which must be made available include the following:

- (1) Regular educational programs with modification;
- (2) Resource rooms;
- (3) Self-contained programs;
- (4) Day school programs;
- (5) Residential school programs;
- (6) Home and hospital programs; and
- (7) Other settings.

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For each of the programs listed in this section, the IEP team shall determine the extent to which related services are required in order for the child to benefit from the program. The length of the school day must be equal in duration to that of a regular public school day unless an adjusted school day is required to meet the individual needs of the child. The committee shall provide for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement, as applicable.

In those cases where placement is made in a day or residential school program, the district may abide by the school term of the facility in which the child is placed based on the individual needs of the child.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:03. Factors in determining placements.** Each school district shall establish and implement procedures which ensure that the following factors are addressed in determining placements:

(1) Each child's educational placement must be individually determined at least annually and must be based on the child's individual education program;

(2) Provisions are made for appropriate classroom or alternative settings necessary to implement a child's individual education program;

(3) Unless a child's individual education plan requires some other arrangement, the child shall be educated in the school which that child would normally attend if not disabled. Other placement shall be as close as possible to the child's home;

(4) Placement in the least restrictive environment will not produce a harmful effect on the child or reduce the quality of services which that child needs; and

(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:04. Program options.** Each school district shall take steps to ensure that its children in need of special education or special education and related services have

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available to them the variety of educational programs and services available to children without disabilities in the area served by the district, including art, music, industrial arts, ~~consumer and homemaking education~~, family and consumer science, and vocational education.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:05. Nonacademic and extracurricular services.** Each school district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children in need of special education or special education and related services an equal opportunity for participation in those activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:06. Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities listed in this chapter, each school district shall develop and implement procedures which ensure that each child in need of special education or special education and related services participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that child. The district shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:07. Children in public or private institutions.** Each school district through its IEP team and individual education program procedures, shall ensure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:08. Physical education services.** Physical education services, specially designed if necessary, shall be made available to every child in need of special education or special education and related services, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities unless the child is enrolled full time in a separate facility or the child needs specially designed physical education which cannot be provided in the regular physical education program.

If specially designed physical education is prescribed in the child's individual education program, the school district responsible for the education of the child shall provide the services directly or make arrangements for it to be provided through other public or private programs.

For children enrolled in separate facilities, the district responsible for the education of the child shall ensure that the child receives appropriate physical education services.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

~~**24:05:28:09. Reintegration.** Decisions for movement of a student from a more restrictive to a less restrictive educational environment shall be made by the child's placement committee. The IEP team shall establish a plan to prepare the student, the receiving teacher, and the students in the receiving classroom for the move.~~

~~**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~**General Authority:** SDCL 13-37-1.1.~~

~~**Law Implemented:** SDCL 13-37-1.1.~~

**24:05:28:10. Preschool programs.** The requirements of this chapter apply to all eligible preschool children, ages three to five, inclusive, who are entitled to receive a free appropriate public education.

In each case, the school district must ensure that placement is based upon each child's individual education program and meets all the other requirements of this chapter.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:11. Technical assistance and training.** The department shall ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the provisions of this chapter and are provided with technical assistance and training necessary to assist them.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:28:12. Monitoring activities.** The department shall ensure that the provisions of this chapter are implemented by each district. If the department finds evidence that a district makes placements that are inconsistent with the requirements for the least restrictive environment in Part B of the Individuals with Disabilities Act, the department shall review the district's justification for its actions and shall assist in planning and implementing any necessary corrective action.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

## CHAPTER 24:05:29

### CONFIDENTIALITY OF INFORMATION

#### Section

24:05:29:01	District policies and procedures on confidentiality of information.
24:05:29:02	Definitions.
24:05:29:03	Annual notification of rights.
24:05:29:04	Access rights.
24:05:29:05	Record of access.
24:05:29:06	Records on more than one child.
24:05:29:07	List of types and locations of information.
24:05:29:08	Fees.
24:05:29:09	Amendment of records at parent's request.
24:05:29:10	Opportunity for a hearing.
24:05:29:11	Hearing procedures.
24:05:29:12	Result of hearing.
24:05:29:13	Consent.
24:05:29:14	Safeguards.
24:05:29:15	Destruction of information.
24:05:29:16	Children's rights.
24:05:29:17	Enforcement.
24:05:29:18	Notice to parents.
24:05:29:19	Disciplinary information.
24:05:29:20	U.S. department use of personally identifiable information.

**24:05:29:01. District policies and procedures on confidentiality of information.** Each school district shall develop and implement policies and procedures on the confidentiality of information consistent with this chapter.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:02. Definitions.** The following definitions apply to this chapter only:

(1) "Act," "FERPA," the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section ~~438~~ 444 of the General Education Provisions Act ~~as in effect December 23, 1996~~;

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(2) "Attendance," includes, but is not limited to presence in person or by correspondence; the period during which a person is working under a work-study program;

(3) "Destruction," means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable;

(4) "Directory information," information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed, such as, but not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, enrollment status (e.g full time or part time) participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees, honors, and awards received, and the most recent previous educational agency or institution attended;

(5) "Disclosure," to permit access to or the release, transfer, or other communication of education records or the personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic;

(6) "Education records," records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the following:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit and the law enforcement records are maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to law enforcement officials of the same jurisdiction;

(c) Records related to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, are related exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of the individual's status as a student are educational records and not excepted under this subdivision;

(d) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals

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providing the treatment. For the purpose of this section, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(e) Records that only contain information about an individual after the individual is no longer a student at that agency or institution;

(7) "Eligible student," a student who has reached 18 years of age or is attending an institution of postsecondary education;

(8) "Institution of postsecondary education," an institution that provides education to students beyond the secondary school level;

(9) "Secondary school level," the educational level, not beyond grade twelve, at which secondary education is provided as determined under state law;

(10) "Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA;

(11) "Personally identifiable information," includes, but is not limited to the student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, and a list of personal characteristics or other information that would make the student's identity easily traceable; and

(12) "Record," any information recorded in any way, including handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:03. Annual notification of rights.** Each school district shall annually notify parents of students currently in attendance and eligible students currently in attendance at the agency or institution of their rights under the Act and this chapter. The notice must inform ~~include a statement that~~ the parent or eligible student has a right to do the following:

(1) Inspect and review the student's education records;

(2) Seek ~~Request~~ the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

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(3) Consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this chapter authorize disclosure without consent; and

(4) File with the U. S. Department of Education a complaint concerning alleged failures by the agency or institution to comply with the requirements of the Act and this chapter.

The notice shall also include the procedures for exercising the right to inspect and review education records, the procedures for requesting the amendment of records and, if the educational agency or institution has a policy of disclosing education records, a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

The district may provide this notice by any means that are likely to inform the parents and eligible students of their rights and that will effectively notify parents of students who have a primary or home language other than English and parents or eligible students who are disabled.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:04. Access rights.** Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this chapter. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing, or resolution session, and in no case more than 45 calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

(1) The right to response from the district to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

The district may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not

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have the authority under applicable state law governing such matters as guardianship, separation, divorce, or custody.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-References:**

Divorce and separate maintenance, SDCL chapter 25-4.

Jurisdiction and venue of guardianships, SDCL chapter 30-26.

Appointment, qualification, bonds and removal of guardians, SDCL chapter 30-27.

Custody, care and maintenance of wards, SDCL chapter 30-28.

**24:05:29:05. Record of access.** Each school district shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter, except access by parents and authorized employees of the district, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A parent or eligible student may inspect this record on request.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:06. Records on more than one child.** If ~~an~~ any education record includes information on more than one child, the parents of those children may inspect and review only the information relating to their child or may be informed of that specific information.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:07. List of types and locations of information.** Each school district shall provide parents on request a list of the types and location of education records collected, maintained, or used by the district.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:08. Fees.** A school district may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents

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from exercising their right to inspect and review those records. The district may not charge a fee to search for or to retrieve information under this chapter.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Fees, 34 C.F.R. § 300.566.

**24:05:29:09. Amendment of records at parent's request.** A parent who believes that information in education records collected, maintained, or used under this article is inaccurate or misleading or violates the privacy or other rights of the student may request the district which maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

If the district decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:10. Opportunity for a hearing.** The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:11. Hearing procedures.** At a minimum, a district's hearing procedures must include the following elements:

(1) The hearing must be held within 30 days after the district received the request, and the parent of the student or eligible student shall be given notice of the date, place, and time 5 days in advance of the hearing;

(2) The hearing may be conducted by any party, including an official of the district, who does not have a direct interest in the outcome of the hearing;

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(3) The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of the parent's choice at the parent's own expense, including an attorney;

(4) The district shall make its decision in writing within 30 days after the conclusion of the hearing; and

(5) The decision of the district shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:12. Result of hearing.** If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and inform the parents in writing.

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the district.

Any explanation placed in the records of the student under this section must be maintained by the district as part of the records of the student as long as the record or contested portion is maintained by the district. If the records of the student or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:13. Consent.** ~~Except as to disclosures addressed in § 24:05:26:15 for which parental consent is not required by FERPA,~~ Parental consent must be obtained before personally identifiable information is disclosed to ~~anyone~~ parties other than officials of ~~the district~~ participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized

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without parental consent under FERPA. The district may not release information from education records to participating agencies without parental consent except as follows:

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and

(2) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements. ~~If the parents refuse consent for the release of personally identifiable information to a third party, that party may proceed with the due process procedures under chapter 24:05:30 in an effort to obtain the desired information.~~

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:14. Safeguards.** Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official in the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this chapter concerning personally identifiable information.

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Each district shall maintain for public inspection a current listing of the names and positions of those employees within the district who may have access to personally identifiable information on students in need of special education or special education and related services.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:15. Destruction of information.** The school district shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the student.

The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:16. Children's rights.** All of the parental rights in this chapter are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, consistent with § 24:05:30:16.01, including taking into consideration the type or severity of a child's disability.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:17. Enforcement.** The Office of Education Services and Resources, Office of Special Education, shall ensure that all school districts in this state comply with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:29:18. Notice to parents.** The department shall give notice that fully informs parents about the requirements under this chapter, including the following:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the state;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including sources from whom information is gathered, and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all the rights of parents and children regarding this information, including the rights under 34 C.F.R. Part 99, Family Educational Rights and Privacy Act, as amended, ~~as in effect December 23, 1996.~~

Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:19. Disciplinary information.** A local educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

Consistent with the above policy, if a child transfers from one school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

**Source:** 26 SDR 150, effective May 22, 2000.

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**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:29:20. U.S. department use of personally identifiable information.** If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Family Educational Rights and Privacy Act of 1974, as amended to November 1, 1999, the U.S. secretary shall apply the applicable provisions of 5 U.S.C. 552a, as amended to November 1, 1999, and the regulations implementing those provisions in 34 C.F.R. part 5b, as amended to November 1, 1999.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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## CHAPTER 24:05:30

### PROCEDURAL SAFEGUARDS

#### Section

- 24:05:30:01 General responsibility of school district.
- 24:05:30:02 Opportunity to examine records.
- 24:05:30:02.01 Parent participation in meetings.
- 24:05:30:02.02 Meetings defined.
- 24:05:30:03 Independent educational evaluation.
- 24:05:30:04 Prior notice ~~and parent consent~~ Transferred.
- 24:05:30:05 Content of notice.
- 24:05:30:06 Form of notice.
- 24:05:30:06.01 Procedural safeguards notice -- Availability.
- 24:05:30:06.02 Procedural safeguards notice -- Contents.
- 24:05:30:06.03 Electronic mail
- 24:05:30:07 ~~Impartial due process hearing~~ Repealed.
- 24:05:30:07 Filing a due process complaint.
- 24:05:30:07.01 Timeline for filing a due process complaint
- 24:05:30:08 Free or low-cost services to parent.
- 24:05:30:08.01 Parent notice to school district.
- 24:05:30:08.02 Content of ~~parent~~ due process complaint notice.
- 24:05:30:08.03 Sufficiency of complaint.
- 24:05:30:08.04 Decision on sufficiency of complaint.
- 24:05:30:08.05 Amendment to due process complaint.
- 24:05:30:08.06 District response to due process complaint.
- 24:05:30:08.07 Other party response to due process complaint.
- 24:05:30:08.08 Model forms.
- 24:05:30:08.09 Resolution meeting - - Participants.
- 24:05:30:08.10 Resolution meeting - - Purpose.
- 24:05:30:08.11 Resolution meeting - - Waive or mediate.
- 24:05:30:08.12 Resolution period - - General.
- 24:05:30:08.13 Dismissal of complaint or initiation of hearing.
- 24:05:30:08.14 Adjustments to 30-day resolution period.
- 24:05:30:08.15 Written settlement agreement.
- 24:05:30:09 Mediation.
- 24:05:30:09.01 Mediator -- Qualified and impartial.
- 24:05:30:09.02 Meeting to encourage mediation.
- 24:05:30:09.03 Mediation agreement.
- 24:05:30:10 Impartial due process hearing.
- 24:05:30:10.01 Subject matter of due process hearings
- 24:05:30:10.02 Timeline for requesting a due process hearing.
- 24:05:30:10.03 Impartial hearing officer.
- 24:05:30:10.04 Decision of hearing officer.

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- 24:05:30:11 Appeal of hearing decision -- Civil action.
- 24:05:30:11.01 Reasonable attorneys' fees.
- 24:05:30:12 Hearing rights.
- 24:05:30:12.01 Additional disclosure of information.
- 24:05:30:13 Time limit for and convenience of hearings.
- 24:05:30:14 Child's status during proceedings.
- 24:05:30:15 Surrogate parents..
- 24:05:30:16 ~~Continuation as surrogate parent.~~ Repealed.
- 24:05:30:16.01 Transfer of parental rights.
- 24:05:30:17 ~~Consent.~~ Transferred

**24:05:30:01. General responsibility of school district.** Each school district shall establish, maintain, and implement procedural safeguards which meet the requirements of this chapter.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:02. Opportunity to examine records.** The parents of a child in need of special education or special education and related services shall be afforded, in accordance with the procedures in chapter 24:05:29, an opportunity to inspect and review all education records concerning the identification, evaluation, and educational placement of the child and the provisions of a free appropriate public education to the child.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:02.01. Parent participation in meetings.** The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Each school district shall provide notice consistent with § 24:05:25:16 to ensure that parents of eligible students be given the opportunity to participate in the meetings described in this article. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without parental involvement, if the district is unable to obtain the parent's participation in the decision. ~~The district must have a record of its attempts to ensure parental involvement, including information consistent with § 24:05:25:17. The district shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the~~

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~~educational placement of their child, including arranging for an interpreter for parents with deafness or whose native language is other than English.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:02.02. Meetings defined.** For the purposes of § 24:05:30:02.01, a meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of services provision ~~if those issues are not addressed in the child's individualized education program.~~ In addition, a meeting does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:03. Independent educational evaluation.** A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district subject to the conditions in this section.

Each district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations specified in this section.

If a parent requests an independent educational evaluation, the district may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the district may not unreasonably delay either providing the independent educational evaluation at public expense or ~~initiating~~ file a due process complaint to request a due process hearing to defend the public evaluation.

If the parent requests an independent educational evaluation at public expense, the district must, without unnecessary delay, either ~~initiate~~ file a due process complaint to request a hearing under this chapter to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria. If the district ~~initiates~~ files a due process complaint to request a hearing under this chapter and the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

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If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation must be considered by the district, if it meets district criteria, in any decision made with respect to the provision of a free appropriate public education to the child and may be presented by any party as evidence at a hearing under this chapter regarding that child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. If an independent evaluation is made at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Each district shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

For the purposes of this section "independent education evaluation" means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. "Public expense" means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with 24:05:14:01 through 24:05:14:01.05.

Except for the criteria described in this section, a district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:04. Prior notice and parent consent.** Written notice which meets the requirements of § 24:05:30:05 must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents. ~~If the notice described in this section relates to an action proposed by the district that also requires parental consent, the district may give notice at the same time it requests parent consent.~~

~~Informed parental consent must be obtained before conducting a first time evaluation, reevaluation, and before initial placement of a child in a program providing special education or special education and related services. Parental consent is not required before:~~

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~~—— (1) Reviewing existing data as part of an evaluation or reevaluation; or~~  
~~—— (2) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.~~

~~—— A district may not use a parent's refusal to consent to one service or activity under this article to deny the parent or child any other service, benefit, or activity of the district except as required by this chapter.~~

~~—— If a parent refuses to give consent for the child to be evaluated or reevaluated, the district may use the hearing or mediation procedures in this article to determine whether the child may be evaluated without parental consent.~~

~~—— If the hearing officer upholds the district, the district may evaluate or reevaluate the child without parental consent, subject to the parent's right to appeal the decision to the courts.~~

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 28 SDR 105, effective January 31, 2002.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:05. Content of notice.** The notice must include the following:

(1) A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any other options the ~~district~~ IEP team considered and the reasons why those options were rejected;

(2) A description of each evaluation procedure, assessment, ~~test~~, record, or report that the district uses as a basis for the proposal or refusal;

(3) A description of any other factors which are relevant to the district's proposal or refusal;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this article and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this article.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

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**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:06. Form of notice.** The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, ~~the division or~~ the local education agency shall take steps to ensure that the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication, that the parent understands the content of the notice, and that there is written evidence that the requirements in this section have been met.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:06.01. Procedural safeguards notice -- Availability.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy must also be given to the parent:

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon request by a parent;
- (3) In accordance with the discipline procedures in chapters 24:05:06 and 24:05:06.01; and
- (4) Upon receipt of a request for a due process hearing under this chapter the first state complaint under chapter 24:05:15 and first due process complaint under this chapter in a school year.

A district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:06.02. Procedural safeguards notice -- Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this article and the state complaint procedures relating to:

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present complaints to initiate due process hearings and resolve complaints through the due process complaint and state complaint procedures, including:

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- (a) The time period in which to file a complaint;
- (b) The opportunity for the district to resolve the complaint; and
- (c) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The child's placement during pendency of any due process ~~proceedings~~ complaint;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) The availability of mediation;
- (10) ~~Due process~~ Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) Civil actions, including the time period in which to file those actions; and
- (12) Attorneys' fees. ~~and~~
- ~~(13) The state complaint procedures under chapter 24:05:15, including a description of how to file a complaint and the timelines under these procedures.~~

The form of the notice must be consistent with § 24:05:30:06, including written evidence that the requirements in this section have been met.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:06.03. Electronic mail.** A parent of a child with a disability may elect to receive notices required by this chapter by an electronic mail communication, if the district makes that option available.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:07. Filing a due process complaint.** A parent or a school district may file a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:07.01 Timeline for filing a due process complaint.** A due process complaint shall allege a violation that occurred not more than two years before the date

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the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(1) Specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint; or

(2) The district's withholding of information from the parent that was required under this chapter to be provided to the parent.

**Source:**

**General Authority:**

**Law Implemented:**

~~**24:05:30:07. Impartial due process hearing.** The school district superintendent, chief administering officer, or a parent upon notice to the school district superintendent or chief administering officer may initiate a hearing on the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education.~~

~~—— The school district shall immediately notify the Division of Education Services and Resources, Office of Special Education, when a hearing is initiated.~~

~~—— The division shall immediately notify the parents of the availability of mediation described in this chapter.~~

~~—— The state director of special education shall appoint an impartial due process hearing officer to conduct the hearing. Either party may request a one-time change in the hearing officer appointed to hear the case. The request must be in writing and submitted to the state director of special education within five working days after receipt of notice of the initial appointment.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~—— **Law Implemented:** SDCL 13-37-1.1.~~

**24:05:30:08. Free or low-cost services to parent.** The ~~state director of special education~~ school district shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent or school district files a due process complaint ~~initiates a hearing~~ under this chapter or the parent requests the information.

**Source:** 16 SDR 41, effective September 7, 1989; 17 SDR 30, effective August 27, 1990; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:30:08.01. Parent notice to school district.** A school district must have procedures that require either party the parent of a child with a disability or the attorney representing a party the child, to provide to the other party notice a due process complaint, which must remain confidential. ~~to the district in a request for a due process hearing under this chapter.~~ The party filing a due process complaint shall forward a copy to the department.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:08.02. Content of due process complaint parent notice.** The notice required in § 24:05:30:08.01 must include:

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;
- (4) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
- (5) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the parents at the time. ~~The division shall develop a model form to assist parents in filing a request for a due process hearing that includes the information required in this section.~~

~~A school district may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in this section.~~

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:08.03. Sufficiency of complaint.** The due process complaint required by this section shall be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in 24:05:30:08.02.

**Source:**

**General Authority:**

**Law Implemented:**

Draft

**24:05:30:08.04. Decision on sufficiency of complaint** Within five days of receipt of the notification under 24:05:30:08.03, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of 24:05:30:08.02, and shall immediately notify the parties in writing of that determination.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.05. Amendment to due process complaint.** A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting held under 24:05:30:08.09; or

(2) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.06. District response to due process complaint.** If the district has not sent a prior written notice under this chapter to the parent regarding the subject matter contained in the parent's due process complaint, the district shall, within 10 days of receiving the due process complaint, send to the parent a response that includes:

(1) An explanation of why the district proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the district's proposed or refused action.

A response by the district under this section shall not be construed to preclude the district from asserting that the parent's due process complaint was insufficient, where appropriate.

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**Source:**  
**General Authority:**  
**Law Implemented:**

**24:05:30:08.07. Other party response to due process complaint.** Except as provided in 24:05:30:08.06, the party receiving a due process complaint shall, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

**Source:**  
**General Authority:**  
**Law Implemented:**

**24:05:30:08.08. Model forms.** The department shall develop model forms to assist parents and school districts in filing a due process complaint in accordance with this chapter and a state complaint under chapter 24:05:15. However, the department or a school district may not require the use of the model forms.

Parents, school districts, and other parties may use the appropriate model forms described in this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 24:05:30:08.02 for filing a due process complaint, or the requirements in chapter 24:05:15 for filing a state complaint.

**Source:**  
**General Authority:**  
**Law Implemented:**

**24:05:30:08.09. Resolution meeting -- Participants.** Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under this chapter, the district shall convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

- (1) Includes a representative of the district who has decision-making authority on behalf of the district; and
- (2) May not include an attorney of the district unless the parent is accompanied by an attorney.

The parent and district shall determine the relevant members of the IEP team to attend the meeting.

**Source:**  
**General Authority:**  
**Law Implemented:**

**Draft**

**24:05:30:08.10. Resolution meeting -- Purpose.** The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.11. Resolution meeting -- Waive or mediate** The resolution meeting need not be held if:

- (1) The parent and the district agree in writing to waive the meeting; or
- (2) The parent and the district agree to use the mediation process described in this chapter.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.12. Resolution period -- General** If the district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in 24:05:30:08.14, the timeline for issuing a final decision in a due process hearing begins at the expiration of this 30-day period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.13. Dismissal of complaint or initiation of hearing.** If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in 24:05:25:17, the district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

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If the district fails to hold the resolution meeting specified in 24:05:30:08.09 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.14. Adjustments to 30-day resolution period.** The 45-day timeline for the due process hearing described in this chapter starts the day after one of the following events:

- (1) Both parties agree in writing to waive the resolution meeting;
- (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
- (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or district withdraws from the mediation process.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:08.15 Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in 24:05:30:08.09 and 24:05:30:08.10, the parties shall execute a legally binding agreement that is:

- (1) Signed by both the parent and a representative of the district who has the authority to bind the district; and
- (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement pursuant to this section, a party may void the agreement within 3 business days of the agreement's execution .

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:09. Mediation.** ~~Within five working days after receipt from a local school district superintendent or chief administering officer of a written request for a hearing pursuant to this chapter the state director of special education may initiate steps to conduct a mediation conference. Either party may waive the mediation conference. Each school district shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under this article, including matters arising~~

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prior to the filing of a due process complaint, to resolve disputes through a mediation process. Procedures for mediation are as follows:

(1) The ~~state director of special education district~~ shall ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay an aggrieved party's right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and

(2) The mediation conference is an intervening, informal process conducted in a nonadversarial atmosphere that is scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

~~(3) The mediation must be completed within 15 calendar days after receipt by the state director of special education of the request for the hearing;~~

~~—— (4) Either party to the mediation conference may request the hearing officer to grant a continuance. Such a continuance shall be granted upon a showing of good cause. A continuance may not extend the 45 calendar day maximum for completion of the due process hearing and rendering of the final administrative decision unless the party initiating the request for the hearing is agreeable to such an extension;~~

~~—— (5) The mediation resolution may not conflict with state or federal law and must be to the satisfaction of both parties. Satisfaction shall be indicated by the signatures of both parties on the written resolution;~~

~~—— (6) A copy of the written resolution shall be mailed by the mediator to each party within 5 calendar days following the mediation conference. A copy shall also be filed by the mediator with the state director of special education;~~

~~—— (7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process; and~~

~~—— (8) Mediation, at a minimum, must be available whenever a hearing is requested under this chapter or chapters 24:05:26 and 24:05:26.01.~~

The state shall bear the cost of the mediation process, including the costs of meetings described in § 24:05:30:09.02.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Draft**



**24:05:30:09.01. Mediator -- Qualified and impartial.** The mediation process shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. Mediators shall be selected on a random, rotational, or other impartial basis. ~~from the list.~~ An individual who serves as a mediator:

(1) May not be an employee of:

(a) Any school district or state agency that is involved in the education or care of the child; or

(b) The department, if the department is providing direct services to a child who is the subject of the mediation process; and

(2) May not have a personal or professional interest that conflicts with the persons objectivity ~~conflict of interest.~~

A person who otherwise qualifies as a mediator is not an employee of a district or state agency solely because the person is paid by the department to serve as a mediator.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:09.02. Meeting to encourage mediation.** A school district may establish procedures to ~~require~~ offer to parents and schools who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with a parent training and information center or community parent resource center in the state, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

~~A school district may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:09.03. Mediation agreement.** If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

**Draft**

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court; and

(2) Is signed by both the parent and a representative of the district who has the authority to bind such district.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:10. Impartial due process hearing.** Whenever a due process complaint is received under this chapter, chapter 24:05:26, and chapter 24:05:26.01, the parents or the district involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in this article.

The department is responsible for conducting due process hearings.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:10.01. Subject matter of due process hearings.** The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under this chapter, unless the other party agrees otherwise.

A parent may file a separate due process complaint on an issue separate from a due process complaint already filed.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:10.02. Timeline for requesting a due process hearing.** A parent or district shall request an impartial hearing on their due process complaint within two years of the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the exceptions in 24:05:30:07.01 exist.

**Source:**

**Draft**

**General Authority:**

**Law Implemented:**

**24:05:30:10.03 Impartial hearing officer.** A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the child or by any person having a personal or professional or fiscal interest that conflicts with the person's objectivity in the hearing. ~~which would create a conflict of interest.~~

A hearing officer shall:

(1) Possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;

(2) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(3) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

An individual who otherwise qualifies to conduct a hearing is not an employee of the agency solely because the individual is paid by the agency to serve as a hearing officer.

Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:10.04. Decision of hearing officer.** Subject to the provisions of this section, a hearing officer's determination of whether a child received FAPE shall be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(1) Impeded the child's right to a FAPE;

(2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(3) Caused a deprivation of educational benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering a district to comply with procedural requirements under this chapter, chapter 24:05:26, and chapter 24:05:26.01.

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**Source:**

**General Authority:**

**Law Implemented:**

**24:05:30:11. Appeal of hearing decision -- Civil action.** Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 and 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action shall have 90 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall review the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decisions on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for filing a due process complaint hearing must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:11.01. Reasonable attorneys' fees.** In any action or proceeding brought under 20 U.S.C. § 1415(e), the court, in its discretion, may award reasonable attorneys' fees under 20 U.S.C. § 1415(i)(3) as in effect on December 3, 2004 ~~June 4, 1997~~, as part of the cost to: ~~the parent or guardian who is the prevailing party. Each public agency shall inform parents of the provisions for attorneys' fees.~~

- (1) The prevailing party who is the parent of a child with a disability;
- (2) The prevailing party who is the state or district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (3) The prevailing party who is the state or district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause

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of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and this chapter. This does not preclude a district from using IDEA, Part B funds for conducting an action or proceeding under section 615 of IDEA.

A court awards reasonable attorneys' fees under section 615(i)(3) of the IDEA consistent with the following:

(1) Fees awarded under section 615(i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this section;

(2) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure (1987) or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(b) The offer is not accepted within 10 days; and

(c) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement;

(3) Attorneys' fees may not be awarded relating to any meeting of the placement committee unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the department for a mediation described in this chapter. ~~that is conducted before the filing of a request for due process under this chapter;~~ A resolution meeting conducted pursuant to this chapter shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or an administrative hearing or judicial action for purposes of this section.

(4) An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer;

(5) The court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

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(b) The amount of attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with this chapter.

(6) The provisions of subdivision (5) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:12. Hearing rights.** Any party to a hearing, under this chapter or chapters 24:05:26 and 24:05:26.01, has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training concerning the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory counsel and shall make those findings and decisions available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:12.01. Additional disclosure of information.** At least five business days prior to a hearing conducted under this chapter, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:13. Time limit for and convenience of hearings.** The department shall ensure that not later than 45 calendar days after the ~~receipt of a request for a hearing~~ expiration of the 30 day period under 24:05:30:08.12 or adjusted time period described in 24:05:30:08.14, a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section ~~45 day time limit~~ at the request of either party. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:14. Child's status during proceedings.** Except as provided in chapters 24:05:26 and 24:05:26.01, during the pendency of any administrative hearing or judicial proceeding regarding a due process complaint notice requesting a due process hearing pursuant to this chapter, the child involved must remain in the present educational placement unless the state or school district and the parents agree otherwise. If the complaint hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

If the complaint involves an application for initial services under this article from a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the district must provide

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those special education and related services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between ~~a school district or state agency~~ the state and the parents for purposes of pendency.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:15. Surrogate parents.** Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in 24:05:13.01, can be identified and the district, after reasonable effort, cannot locate ~~discover the whereabouts of~~ a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act. ~~At a minimum,~~ A district's method for determining whether a child needs a surrogate parent must include the following:

- (1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;
- (2) The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and
- (3) The establishment of a referral system within the district for the appointment of a surrogate parent.

In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

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~~A district may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the conflict of interest and knowledge standards in this section.~~

A person assigned as a surrogate may not be an employee of the department, district, or any other agency ~~a public agency~~ that is involved in the education or care of the child.

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, without regard to the sentence above, until a surrogate parent can be appointed that meets all of the requirements of this section.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement, and provision of FAPE to the students.

The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a district determines that the child needs a surrogate parent.

~~The district superintendent or a designee is responsible for reporting to the placement committee on the performance of the surrogate parent.~~

**Source:** 16 SDR 68, effective October 15, 1989; 21 SDR 39, effective August 28, 1994; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-2.1 13-37-27.

~~**24:05:30:16. Continuation as surrogate parent.** An individual assigned as a surrogate parent shall continue in that capacity as long as the child meets the following conditions:~~

~~—— (1) Remains eligible for special education or special education and related services;~~

~~—— (2) Meets the criteria for the appointment of a surrogate parent or unless the person appointed as a surrogate parent fails to represent the best interest of the child; and~~

~~—— (3) Remains a resident of the placing district.~~

~~—— Removal of an individual as a surrogate parent shall be accomplished by the district superintendent or designee.~~

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~~Source: 16 SDR 68, effective October 15, 1989; 23 SDR 31, effective September 8, 1996.~~

~~General Authority: SDCL 13-37-1.1.~~

~~Law Implemented: SDCL 13-37-1.1.~~

**24:05:30:16.01. Transfer of parental rights.** Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur:

(1) The school district shall provide any notice required by this article to both the individual and the parents;

(2) All other rights accorded to parents under this article transfer to the child; and

(3) All rights accorded to parents under this article transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights. ~~If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program of the child, the school district shall appoint the parent or, if the parent is not available, another appropriate individual to represent the educational interests of the child throughout the child's eligibility under this article.~~

A state shall establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the IDEA if, under state law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:30:17. Consent.** ~~"Consent" means that the parents have been fully informed in the native language or another mode of communication of all information relevant to the activity for which consent is sought in the native language or another mode of communication; the parents understand and agree in writing to the carrying out of the activity for which consent is sought; the consent describes that activity and lists any records which will be released and to whom; and the granting of consent by the parents is voluntary and may be revoked in writing at any time. If a parent revokes consent, that revocation is not retroactive (i.e., the revocation does not negate an action that has occurred after the consent was given and before the consent was revoked).~~

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— ~~Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

— ~~General Authority: SDCL 13-37-1.1.~~

— ~~Law Implemented: SDCL 13-37-1.1.~~

## CHAPTER 24:05:31

### PRIVATE SCHOOL PLACEMENT

#### Section

- 24:05:31:01     Applicability.
- 24:05:31:02     Responsibility of department.
- 24:05:31:03     Implementation by department.
- 24:05:31:04     Placement of children by parents.
- 24:05:31:05     Reimbursement for private school placement.
- 24:05:31:06     Limitation on reimbursement.
- 24:05:31:07     Exceptions to limitation on reimbursement.

**24:05:31:01. Applicability.** The provisions of this chapter ~~only~~ apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services and eligible children placed in private schools by their parents when FAPE is at issue.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:02. Responsibility of department.** The department is responsible for ensuring that an eligible child who is placed in or referred to a private school or facility by a school district is provided special education or special education and related services in conformance with an individual educational program which meets the requirements of this article at no cost to the parents and is provided an education which meets the standards that apply to state and local school districts, including the requirements in this chapter with the exception of requiring highly qualified special education teachers. The eligible child has all of the rights of a child with a disability served by a school district.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:03. Implementation by department.** The department shall do the following to implement this chapter:

(1) Monitor compliance with this chapter through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of this chapter to each private school and facility to which a public agency has referred or placed an eligible child; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards which apply to them.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:04. Placement of children by parents.** If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this chapter to pay for the child's education including special education and related services, at the private school or facility. However, the public agency must include the child in the population whose needs are addressed consistent with chapter 24:05:32.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**Cross-Reference:** Procedural safeguards, ch 24:05:30.

**24:05:31:05. Reimbursement for private school placement.** If the parents of an eligible child, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that

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enrollment if the court or hearing officer finds that the school district has not made a free appropriate public education available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the state and districts.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:06. Limitation on reimbursement.** The cost of reimbursement described in § 24:05:31:05 may be reduced or denied if:

(1) At the most recent individualized education program team meeting that the parents attended before removal of the child from the public school:

(a) The parents did not inform the individualized education program team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least ten business days, including any holidays that occur on a business day, before the removal of the child from the public school, the parents did not give written notice to the school district of the information described in subsection (a) above;

(2) Before the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements described in chapter 24:05:30, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:31:07. Exceptions to limitation on reimbursement.** Notwithstanding the notice requirements in § 24:05:31:06, the cost of reimbursement may not be reduced or denied for failure to provide notice if:

(1) ~~The parent is illiterate and cannot write in English;~~

(1) Compliance with § 24:05:31:06 would likely result in physical ~~or serious~~ emotional harm to the child;

(2) The school prevented the parent from providing the notice; or

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(3) The parents had not received notice, pursuant to chapter 24:05:30, of the notice requirement in § 24:05:31:06.

In addition, the cost of reimbursement, may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

- (1) The parents are not literate or cannot write in English; or
- (2) Compliance with this section would likely result in serious emotional harm to the child.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

## CHAPTER 24:05:32

### VOLUNTARY ENROLLMENT IN NONPUBLIC SCHOOLS

#### Section

24:05:32:01	Responsibility of department.
24:05:32:01.01	<u>Parentally-placed private school children with disabilities.</u>
24:05:32:01.02	Child find.
24:05:32:01.03	<u>Record keeping.</u>
24:05:32:01.04	Expenditures.
24:05:32:01.05	Child count.
24:05:32:01.06	<u>Consultation.</u>
24:05:32:01.07	<u>Written affirmation.</u>
24:05:32:01.08	<u>Compliance.</u>
24:05:32:01.09	No individual right to special education and related services.
24:05:32:02	Repealed.
24:05:32:03	<del>Consideration of benefits by school districts.</del> <u>Repealed.</u>
24:05:32:03.01	Services plan.
24:05:32:03.02	Services provided.
24:05:32:03.03	Location of services and transportation.
24:05:32:03.04	Complaints.
24:05:32:04 to 24:05:32:10	Repealed.
24:05:32:11	Proscribed use of funds.
24:05:32:12	Proscribed use of funds for benefit of private school.
24:05:32:13	Personnel use authorized.
24:05:32:14	Use of private school employees authorized.
24:05:32:15	School district to maintain control of property, equipment, and supplies.
24:05:32:16	Equipment and supplies to be removed from private schools upon cessation of need.
24:05:32:17	Use of program funds for repairs, minor remodeling, or private construction proscribed.
24:05:32:18	Repealed.

**24:05:32:01. Responsibility of department.** The department is responsible for ensuring the participation of eligible parentally-placed private school children in the program assisted or carried out under this article consistent with their number and location by providing them with special education and related services in accordance with this chapter including direct services, unless the U.S. Secretary of Education has arranged for services under the by-pass procedures in Part B of IDEA. The department shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated by the district in which a private school is located to receive special education and related services under this chapter.

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**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:01.01. Parentally-placed private school children with disabilities.**

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the state definition of elementary school or secondary school, other than children with disabilities covered under chapter 24:05:31.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:32:01.02. Child find.** Each district shall locate, identify, and evaluate all private school children with disabilities, including religious elementary and secondary school children and children receiving alternative instruction under SDCL 13-27-3 in schools located in the school district served by the district. ~~residing in the jurisdiction of the district in accordance with this article.~~ The activities undertaken to carry out the responsibility for private school children with disabilities must be similar comparable to activities undertaken for children with disabilities in public schools. ~~Each district shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in this article.~~

The child find process shall be designed to ensure:

- (1) The equitable participation of parentally-placed private school children; and
- (2) An accurate count of those children.

The child find process shall be completed in a time period comparable to that for students attending public schools in the district consistent with this article.

Each school district in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than South Dakota in which the private schools that they attend are located.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:01.03. Record keeping.** Each school district shall maintain in its records, and provide to the department, the following information related to parentally-placed private school children covered under this chapter:

- (1) The number of children evaluated;
- (2) The number of children determined to be children with disabilities; and

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(3) The number of children served.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:32:01.04. Expenditures.** To meet the requirements of § 24:05:32:01, each school district must spend the following amounts on providing special education and related services including direct services to parentally-placed private school children with disabilities:

(1) For children aged 3 to 21, inclusive, an amount that is the same proportion of the school district's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, residing in its jurisdiction who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and

(2) For children aged 3 to 5, inclusive, an amount that is the same proportion of the school district's total subgrant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, residing in its jurisdiction as who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services, including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the district, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities under this chapter.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:01.05. Child count.** Each school district shall:

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(1) After timely and meaningful consultation ~~Consult~~ with representatives of parentally-placed private school children determine the number of eligible children attending private schools located in the district in deciding how to conduct the annual count of the number of private school children with disabilities; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive of each year.

The child count must be used to determine the amount that the school district must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year. Expenditures for child find activities described in § 24:05:32:01.02, including individual evaluations, may not be considered in determining whether the school district or other public agency has met the requirements of § 24:05:32:01.04. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this section consistent with state law or local policy.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:01.06. Consultation.** To ensure timely and meaningful consultation, a school district, or, if appropriate, the department shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(1) The child find process, including:

(a) How parentally-placed private school children suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this chapter, including the determination of how the proportionate share of those funds was calculated.

(3) The consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:

(a) The types of services, including direct services and alternate service delivery mechanisms;

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(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(c) How and when those decisions will be made; and

(5) How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:32:01.07. Written affirmation.** When timely and meaningful consultation, as required by 24:05:32:01.06, has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the district shall forward the documentation of the consultation process to the department.

**Source:**

**General Authority:**

**Law Implemented:**

**24:05:32:01.08. Compliance.** A private school official has the right to submit a complaint to the department that the school district did not engage in consultation that was meaningful and timely; or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official shall provide to the department the basis of the noncompliance by the district with the applicable private school provisions in this chapter. The district shall forward the appropriate documentation regarding its consultation process to the department.

If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance described in this section. The department shall forward the appropriate documentation regarding the state's decision on the complaint to the U.S. Secretary of Education.

**Source:**

**General Authority:**

**Law Implemented:**

**Draft**

**24:05:32:01.09. No individual right to special education and related services.** No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to eligible private school children with disabilities under this chapter must be made in accordance with § 24:05:32:01.06 and 24:05:32:03.01. The school district shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:02. Requirements to be met by school districts.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

~~**24:05:32:03. Consideration of benefits by school districts.** A school district shall consult in a timely and meaningful way, with appropriate representatives of eligible students enrolled in private schools in light of the funding under § 24:05:32:01.01, regarding the number of private school children with disabilities, the needs of these children, and their location to decide:~~

- ~~—— (1) Which children will receive services under the § 24:05:32:01;~~
- ~~—— (2) What services will be provided;~~
- ~~—— (3) How and where the services will be provided; and~~
- ~~—— (4) How the services will be evaluated.~~

~~—— Each school district shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirement. The consultation shall occur before the school district makes any decision that affects the opportunities of eligible private school children to participate in services under this chapter. The school district shall make the final decision with respect to the services to be provided to eligible private school children.~~

~~—— **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.~~

~~—— **General Authority:** SDCL 13-37-1.1.~~

~~**Law Implemented:** SDCL 13-37-1.1.~~

**24:05:32:03.01. Services plan.** If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from the district, the district shall:

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(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 24:05:32:03.02; and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district shall use other methods to ensure participation by the private school, including individuals or conference telephone calls.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:03.02. Services provided.** The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of this article. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

- (1) Meet the IEP content requirements with respect to the services provided; and
- (2) Be developed, reviewed, and revised consistent with the IEP provisions in this article.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by the school district with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:03.03. Location of services and transportation.** Services provided to eligible parentally-placed private school children may be provided on the premises of ~~on-site at~~ a child's private school, including a religious school, to the extent consistent with state law. If necessary for the child to benefit from or participate in the services provided

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under this chapter, a private school child with a disability must be provided transportation:

- (1) From the child's school or the child's home to a site other than the private school; and
- (2) From the service site to the private school, or to the child's home, depending on the timing of the services.

Districts are not required to provide transportation from the child's home to the private school. The cost of transportation described in this section may be included in calculating whether the district has met the requirement of § 24:05:32:01.04.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:03.04. Complaints.** The due process hearing and mediation procedures in chapter 24:05:30 do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan ~~individualized education program~~. The due process hearing and mediation procedures in chapter 24:05:30 apply to complaints that the district has failed to meet the child find requirements in § 24:05:32:01.02, including the parent consent and evaluation requirements in this article. Any due process complaint regarding the child find requirements shall be filed with the school district in which the private school is located and a copy shall be forwarded to the department. Complaints that the department or a school district has failed to meet the requirements of this chapter may be filed under the procedures in chapter 24:05:15 consistent with the procedures in 24:05:32:01.08.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:04. School district to make determinations on a comparable basis.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:05. Benefits to be comparable.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:06. Funding programs to be comparable.** Repealed.

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:07. Different needs require different programs.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:08. Program funds to be spent equally.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:09. Costs, if averaged, may differ.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:10. Information to be included in application.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:32:11. Proscribed use of funds.** A school district may not use IDEA Section 619 Preschool or Part B funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:12. Proscribed use of funds for benefit of private school.** A school district may not use IDEA Section 619 Preschool or Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for:

- (1) The needs of a private school; or
- (2) The general needs of the students enrolled in the private school.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

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**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:13. Personnel use authorized.** A school district may use IDEA Section 619 Preschool and Part B funds to make public personnel available in other than public facilities to the extent necessary to provide services designed for students enrolled in a private school if those services are not normally provided by the private school.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:14. Use of private school employees authorized.** A school district may use IDEA Section 619 Preschool or Part B funds to pay for the services of an employee of a private school if the employee performs the services outside regular hours of duty and the employee performs the services under public supervision and control.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:15. School district to maintain control of property, equipment, and supplies.** ~~A school district must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the school district acquires with program funds under Section 619 Preschool or Part B of the Individuals with Disabilities Education Act for the benefit of eligible private school children.~~

A school district shall control and administer the funds used to provide special education and related services under this chapter, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in Part B of the IDEA.

The school district may place equipment and supplies in a private school for the period of time needed for the Part B program.

The school district shall ensure that the equipment and ~~or~~ supplies placed in a private school are used only for the purposes of the Part B program and can be removed from the private school without remodeling the private school facilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

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**24:05:32:16. Equipment and supplies to be removed from private schools upon cessation of need.** The school district shall remove equipment and ~~or~~ supplies from a private school if the equipment and ~~or~~ supplies are no longer needed for the purposes of the Part B program or removal is necessary to avoid unauthorized use of the equipment or supplies for other than Part B program purposes.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:17. Use of program funds for repairs, minor remodeling, or private construction proscribed.** A school district shall ensure that IDEA Section 619 Preschool or Part B funds are not used for repairs, minor remodeling, or construction of private school facilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:32:18. School district responsibility.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

## CHAPTER 24:05:33

### FUNDING

#### Section

24:05:33:01 to 24:05:33:07.01 Repealed.

24:05:33:07.02 Allowable costs -- Special education fund.

24:05:33:08 to 24:05:33:11 Repealed.

#### **24:05:33:01. Computation of tuition for nonresident students. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

#### **24:05:33:02. Proration of tuition of child in two programs. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

#### **24:05:33:03. Maximum rates for related services. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

#### **24:05:33:04. Tuition for foster care students paid by state. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:33:05. Out-of-state placements -- Division to approve placement. Repealed.**

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

#### **24:05:33:05.01. Time limit for written statements. Repealed.**

**Source:** 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

#### **24:05:33:06. Composition of state review committee. Repealed.**

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**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:33:07. Allowable costs -- Special education funds.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 19 SDR 198, effective July 1, 1993; 23 SDR 31, effective September 8, 1996; repealed, 23 SDR 31, January 1, 1997.

**24:05:33:07.01. Allowable costs -- General fund.** Repealed.

**Source:** 19 SDR 198, effective July 1, 1993; 23 SDR 31, effective September 8, 1996; repealed, 23 SDR 31, effective January 1, 1997.

**24:05:33:07.02. Allowable costs -- Special education fund.** The special education fund of a school district may be used to pay the costs for special education of all children in need of special education or special education and related services served by the school district or for which the school district is financially responsible. These costs may not include the following:

- (1) Salaries and benefits of superintendents, chief executive officers, and principals;
- (2) Utilities;
- (3) Custodial services;
- (4) General transportation services;
- (5) Salaries and benefits for nonspecial education staff;
- (6) Nonspecial education supplies and materials;
- (7) Nonspecial education dues and fees;
- (8) Capital outlay expenditures not directly tied to a student's individual educational program; and
- (9) Contributions and donations.

**Source:** 26 SDR 37, effective September 22, 1999.

**General Authority:** SDCL 13-16-32.

**Law Implemented:** SDCL 13-16-32, 13-37-16.

**24:05:33:08. Limitation on administration reimbursement.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 19 SDR 198, effective July 1, 1993.

**24:05:33:09. Calculation of total allowable costs of special education.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 45, effective October 6, 1993; 23 SDR 31, effective September 8, 1996; repealed, 23 SDR 31, effective January 1, 1997.

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**24:05:33:10. Allowable costs for payments to nonpublic special education service providers.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; repealed, 23 SDR 31, effective September 8, 1996.

**24:05:33:11. Allowable costs -- Out-of-state placements.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

## CHAPTER 24:05:33.01

### EXTRAORDINARY COSTS

#### Section

- 24:05:33.01:01 Extraordinary Cost Oversight Board.
- 24:05:33.01:02 Terms of board members.
- 24:05:33.01:03 Composition of board.
- 24:05:33.01:04 Board alternates.
- 24:05:33.01:05 Extraordinary costs.
- 24:05:33.01:06 Application.
- 24:05:33.01:07 Required documentation.
- 24:05:33.01:08 Calculation of indirect costs.
- 24:05:33.01:09 Maximum tax levy required.

**24:05:33.01:01. Extraordinary Cost Oversight Board.** The department shall establish an Extraordinary Cost Oversight Board to review all school district requests for extraordinary cost funds. The board shall meet a minimum of twice a year and shall recommend to the secretary those districts which should be approved for extraordinary cost fund expenditures, as well as those districts which should not be approved for such expenditures.

The secretary has final authority to approve or disapprove extraordinary cost fund expenditures.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-46.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-46.

**24:05:33.01:02. Terms of board members.** The secretary shall appoint seven members to the Extraordinary Cost Oversight Board. Appointment to the board is limited to a maximum of five years. The secretary shall use a staggered appointment schedule when appointing members.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-46.

**Law Implemented:** SDCL 13-37-46.

**24:05:33.01:03. Composition of board.** The membership of the Extraordinary Cost Oversight Board shall include representatives from each of the following groups:

- (1) Department of Education and Cultural Affairs;
- ~~(2) South Dakota Legislature;~~
- (3) School districts with an average daily membership of 2,000 or greater;

**Draft**

- (4) School districts with an average daily membership of 360 to 2,000;
- (5) School districts with an average daily membership of less than 360.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-46.

**Law Implemented:** SDCL 13-37-46.

**24:05:33.01:04. Board alternates.** The secretary shall appoint alternates for the board members as follows to serve in place of a board member who may have a conflict of interest:

- ~~(1) Legislative appointments;~~
- (2) School districts with an average daily membership of 2,000 or greater;
- (3) School districts with an average daily membership of 360 to 2,000;
- (4) School districts with an average daily membership of less than 360.

Alternates shall serve the same term as the equivalent board appointee.

**Source:** 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1, 13-37-46.

**Law Implemented:** SDCL 13-37-46.

**24:05:33.01:05. Extraordinary costs.** Extraordinary costs include the cost of providing a free appropriate public education to students with disabilities that is not covered by a district's revenues from the maximum tax levy as defined in SDCL 13-37-16.

**Source:** 23 SDR 63, effective January 1, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-39, 13-37-40, 13-37-41.

**24:05:33.01:06. Application.** School districts must apply for extraordinary cost funds on a form provided by the secretary. A school district's application for extraordinary cost funds may not include requests for funding of capital acquisitions.

**Source:** 23 SDR 63, effective January 1, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-39, 13-37-40, 13-37-41.

**24:05:33.01:07. Required documentation.** A school district's application for extraordinary cost funds must include the following documentation:

- (1) The most recent annual financial report of the school district; and
- (2) For special education funds, the most recent balance sheet and statement of revenues, expenditures and changes in fund balance - budget and actual for the portion of

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the fiscal year completed, prepared in accordance with generally accepted accounting principles.

The Extraordinary Cost Oversight Board and the secretary of the Department of Education ~~and Cultural Affairs~~ may not consider an application for extraordinary costs funds if the individual education programs do not meet the requirements of this article, the school district does not use generally accepted accounting principles, or special education revenues and expenditures are not recorded in accordance with the accounting manual provided for in SDCL 4-11-6.

**Source:** 23 SDR 63, effective January 1, 1997; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-39, 13-37-40, 13-37-41.

**Cross-References:**

Individual education program, ch 24:05:27.

Auditing, accounting, and review standards, § 20:37:11:07.

Accounting principles, § 20:37:11:08.

Accounting manual for counties, municipalities, school districts and their agencies, SDCL 4-11-6.

**24:05:33.01:08. Calculation of indirect costs.** School districts must use the restricted indirect cost rate provisions in 34 C.F.R. §§ 75.564 to 75.568, inclusive (~~January 1, 1995~~), in calculating indirect costs as part of the extraordinary cost fund application.

**Source:** 23 SDR 63, effective January 1, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-39, 13-37-40, 13-37-41.

**24:05:33.01:09. Maximum tax levy required.** To be eligible for extraordinary cost funds, a school district must levy and expend the maximum amount allowed pursuant to SDCL 13-37-16. The department may allocate extraordinary cost funds to a school district only after the difference between the actual local tax effort and the required levy has been reconciled.

**Source:** 23 SDR 63, effective January 1, 1997.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-38, 13-37-39, 13-37-40, 13-37-41.

**CHAPTER 24:05:34**

**AUXILIARY PLACEMENTS AND TUITION SERVICES**

Section

24:05:34:01

Repealed.

24:05:34:02

Determination of educational program costs for in-state placement of children for whom the state is responsible.

24:05:34:03 and 24:05:34:04 Repealed.

**24:05:34:01. Payments for children for whom the state is responsible.**  
Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:34:02. Determination of educational program costs for in-state placement of children for whom the state is responsible.** The school district in which the child under care and custody of the state resides is responsible for the identification, evaluation, and placement of the child pursuant to the rules in this article governing children in need of special education or special education and related services. The state is responsible for the costs of special education or special education and related services.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1, 13-37-8.6.

**24:05:34:03. Determination of educational program costs for out-of-state placements.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:34:04. Monitoring of out-of-state placements.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

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## CHAPTER 24:05:35

### PROGRAM ALTERNATIVES

#### Section

- 24:05:35:01 District of residence responsible for educational program in juvenile detention facility.
- 24:05:35:02 and 24:05:35:03 Repealed.

**24:05:35:01. District of residence responsible for educational program in juvenile detention facility.** A school district containing a juvenile detention facility is responsible for providing a free appropriate educational program for children and youth assigned to the facility by the court.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:35:02. Educational agreement between juvenile detention facility and school district of residence.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.

**24:05:35:03. Juvenile detention facility is allowable cost.** Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; repealed, 26 SDR 150, effective May 22, 2000.